UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 38, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA (IATSE), AFL-CIO (CROWN CITY PICTURES, INC.)

and Case 7-CB-128512

RALPH BICKFORD, AN INDIVIDUAL

Donna M. Nixon, ESQ.,
for the General Counsel
Christopher Legghio, ESQ., and
Alidz Oshagan, ESQ., of Royal Oak, Michigan
for the Respondent Union.

DECISION

STATEMENT OF THE CASE

Eric M. Fine, Administrative Law Judge. This case was tried in Detroit, Michigan on December 4 and 5, 2014.[1] The charge and amended charge were filed on May 12 and June 30, respectively, by Ralph Bickford against Local 38, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada (IATSE), AFL-CIO (Local 38 or the Union). The complaint is combined with a compliance specification, as amended, pertaining to Bickford. The complaint alleges that on May 13, Local 38 requested that Crown City Pictures, Inc., (the Employer) layoff Bickford because Bickford was not a member of Local 38, and that by this conduct Local 38 attempted to cause and caused the Employer to discriminate against Bickford in violation of Section 8(a)(3) of the Act and therefore Local 38 violated Section 8(b)(2) of the Act.

[1] All dates are 2014 unless otherwise specified.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Local 38, I make the following:[2]

FINDINGS OF FACT

I. Jurisdiction

Crown City Pictures, Inc., (the Employer) a corporation, with an office and place of business in Burbank, California, has been engaged in the production of motion pictures, including the production of the film "Batman vs. Superman," in and around Pontiac, Michigan (the Pontiac worksite). During the calendar year ending December 31, 2013, the Employer, in conducting the described business operations, purchased and received at its Pontiac worksite goods valued in excess of $50,000, directly from points located outside the state of Michigan. Local 38 admits and I find the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 38 is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The General Counsel's witnesses

1. Ralph Bickford's testimony

Bickford testified he does lighting and is an electrician for movies, television, and commercials. Bickford signed an application to become a member of Local 38 in August 2001, and he listed a Hazel Park, Michigan address on the application. On December 5, 2007, Bickford was issued a letter from Local 38 stating he was "expelled for non-payment of dues." The amount Local 38 stated he owed was $154.00, which included $94 for dues, a $10 late fee, and a $50 reinstatement fine. Concerning his being expelled from Local 38, Bickford testified "I ran on some hard times and I didn't pay the dues, so I was expelled from the Union." Bickford testified he has since paid his back dues to Local 38, and he thought he paid the dues in June 2010. Bickford testified he paid the back dues in cash at Local 38's office, and that he may have received a receipt, but he did not keep it. Bickford testified he did not work between 2010 and 2014 in Detroit under a Local 38 contract.

Local 38's member work history for Bickford shows he had earnings in each of the years 2002 to 2010, although he only earned $6,054.00 in 2007 and $2,911.86 in 2008. Bickford's earnings increased in 2009 and 2010. Local 38's work records for Bickford show the last time he worked, pursuant to a Local 38 contract, prior to the current dispute was in September 2010. Bickford testified he worked on the jobs listed for him in Local 38's work

[2] In making the findings, I have considered the witnesses' demeanor, the content of their testimony, and the inherent probabilities of the record as a whole. In certain instances, I have credited some but not all of what a witness said. See *NLRB v. Universal Camera Corporation,* 179 F. 2d 749, 754 (C.A. 2), reversed on other grounds 340 U.S. 474 (1951). All testimony and evidence has been considered. If certain testimony or evidence is not mentioned it is because it is cumulative of the credited evidence, not credited, or not essential to the findings herein. Further discussion of the witnesses' credibility is set forth below.

history including productions for "Red Dawn" and "Game of Death." He testified that Local 38 did not refer him to those jobs. Rather, he received them through people he knew who worked on them. Bickford testified he was paying dues to local 38 at the time he worked on those jobs. Bickford testified that every job he worked on where there is a contract with Local 38 they automatically take three percent out of his pay for dues. Bickford testified he worked from 2007 through 2010 in the Detroit area on movies and other jobs. Bickford testified that between 2007 when he was expelled from Local 38 and 2010, he worked at least two jobs where the Union referred him to the job, and this was in 2008.

Bickford submitted an application to Local 209, an Ohio Local of IATSE, on September 20, 2011. In the notarized application, Bickford stated he resided at a listed Ohio address and he had been a resident of Springfield, Ohio for one year. However, at the trial, Bickford testified he has never been an Ohio resident. When asked if he was telling the truth when he filled out the application as to his Springfield, Ohio address, Bickford testified, "No, I wasn't." Bickford admitted he "lied" as to his Ohio residency stating he was told he had to become a member of Local 209 after he had traveled to the job in Ohio from Las Vegas, which is why he listed the Ohio residence. Bickford testified he was only a member of Local 209 for three months in 2011, in that he only paid a quarter of the membership. Bickford testified that from 2011 to 2014 he had no union affiliation.

Bickford submitted an application for membership to IATSE Local 720 located in Las Vegas, Nevada, which was signed by Bickford on December 6, 2013, wherein he stated he was residing at a listed Boulder City, Nevada address and he had been a resident of Boulder City for 4 years. Bickford testified he is a member in good standing of Local 720, and he has been a member since January 1, 2014. Bickford testified that when you were a member of the union you have to pay quarterly stamps to the local union. He testified the stamp means your dues are current, you are up to date with your payments to the International, and you are in good standing with the International.

When asked at the trial where he lives, Bickford testified he has a residence in Madison Heights, Michigan, and a residence in Boulder City, Nevada, which is a suburb of Las Vegas. Bickford was issued a Michigan state driver's license effective September 6, 2011, with an October 20, 2015, expiration date. The driver's license reflects that Bickford has a Madison Heights, Michigan address. Bickford testified he does not own a home in Nevada or in Michigan. He testified the place where he stays in Madison Heights, Michigan is in his mother's name. Bickford testified he did not pay rent when staying in his mother's home, but he splits the property tax with his mother for the house, and he also pays part of the utilities even when he is not living there. Bickford testified he first obtained a place in Las Vegas in 2006, and he has rented a place in Boulder City, Nevada since 2008. Bickford testified that both his and his wife's cell numbers have Las Vegas area codes. Bickford testified his wife lives with him in Nevada when they are there and in Michigan when they are there. He testified his wife was not employed at the time of his testimony. Bickford testified his wife has been employed in Nevada and he thought the last time was in May 2014. Bickford testified that his wife has been employed on and off for four years at the same place in Nevada. Bickford testified he has a motor vehicle registered in his name in Michigan, and his wife also has a vehicle registered in her name in Michigan. Bickford testified his wife has a Michigan driver's license.

Bickford testified that between 2010 and 2014 he worked some jobs in Las Vegas, Nevada, and he also worked in Detroit but not in any union production. Bickford testified that between 2010 and 2014 he worked in the Detroit area for a couple of different production companies. Bickford testified he worked for Roger Haggart, who does production work.

Bickford could not recall any other employers he worked for in Detroit during that period. Bickford testified, "I can't recall specifics, but I did have two or three jobs a year doing various commercials and training films with different – different companies in Michigan." Bickford testified that between November 2011 and December 2012, he was a partner in a medical marijuana business in Michigan. Bickford testified that during the period 2010 to 2014 in Las Vegas he worked at The Sands Convention Center, the employer being SAE Productions. Bickford testified there were probably 10 or 15 other jobs in Las Vegas, but he could not recall the names of the production companies. Bickford testified that between 2010 and 2014 he was living in Las Vegas sometimes. However, Bickford testified Michigan is the place where he spends most of his time, and between 2010 and 2014 he spent most of his time in Michigan. He testified that between 2010 and 2014, he had some jobs in Las Vegas and he worked about 100 days there during that period, and he probably worked 20 days in Michigan between 2010 and 2014.

Bickford testified he worked on the movie "Batman vs. Superman," known for production purposes under the code name Sage & Milo. Bickford testified the employer is Crown City Pictures, Inc. which is a subsidiary of Warner Brothers. Bickford explained a code name is given to a movie to keep the real name from the public during production. Bickford testified the location where he worked was Pontiac, Michigan. Bickford worked there for a week for the week ending May 2, 2014. Bickford was not referred to Sage & Milo by Local 38.

Bickford learned of Sage and Milo from a contact he had in Las Vegas, who gave Bickford the phone number of the Best Boy Dan Jones for the picture. Bickford called Jones in February 2014 about a job. At that time, Jones was in Los Angeles and Bickford was in Nevada. Bickford testified the best boy is the second person in charge of hiring. Bickford testified he also had a conversation with Jones in April when Jones told Bickford that when it came time for hiring with Sage & Milo that Bickford would have to have a Michigan driver's license and address. Bickford told Jones that he had a Michigan driver's license and a Michigan residence. Bickford testified that in April 2014 he resided in Michigan, and that he has resided in Michigan all of his life. He testified he has also resided in Nevada part-time on and off since 2006. He testified that when the weather is poor he goes to Nevada, but he stays in Michigan most of the time. He testified he defines residency as where he stays most of the time. He testified he has never been a resident of any other place but Michigan.

Bickford testified Michael Conner was hired as the fixture foreman for the Sage & Milo production. Bickford spoke to Conner during the first week of April 2014. Bickford testified Conner stated he would love to have Bickford work on the picture, as they had worked together in the past, and he had known Conner for over 20 years. Bickford testified Conner said he was not able to hire at that time, and Conner told Bickford to call in a week or so. Bickford called, as requested, but again Conner was not ready to hire. Bickford testified that, while he was having these pre-hire discussions with Conner, Conner was aware that Bickford was in Nevada. Bickford testified the Conner never brought up a residency requirement with him.

Bickford testified he had another conversation with Conner in the last week of April and Bickford was told that production for the movie was likely to be at least 6 to 9 months. During the call, Conner offered and Bickford accepted the job of working on fixtures for the film. Conner said they would be starting on Monday morning, which was April 28. Bickford stated he had scheduled a vacation for May 3 to May 9. Bickford testified Conner approved the vacation. Bickford testified, "I had stated to Mike Conner that's I was good with the union because I was – I was under the impression as long as I was a member in good standing with any IATSE local, that working would not be a problem." Bickford testified that when he said to Conner

that he was good with the union Bickford did not say which union and Conner did not ask. Bickford testified at the time of this conversation with Conner, Bickford was in Boulder City, Nevada. When he was hired Bickford gathered his things and drove his truck from Nevada to Detroit. Bickford testified that before he began his employment at Sage & Milo he told Conner that Bickford was going to come to Michigan and live with his mother. Bickford testified Conner asked him that question. Bickford testified Conner knew Bickford's mother and Conner knew Bickford was renting a house in Las Vegas.

Bickford began work at Sage & Milo on April 28, and he filled out at packet of documents for the Employer on that date. On the initial page of the documents, Bickford reported his mailing address to be located in Madison Heights, Michigan and that his "W2 address" was in Boulder City, Nevada. Bickford listed the Michigan address on the I-9 form. An Employer verification form on the packet showed that Bickford has a Michigan driver's license with a 2015 expiration date. As part of the packet, Bickford signed a "Retroactive Payroll Deduction Consent Form IATSE Local 38" stating effective immediately, Bickford authorized the Employer on behalf of Local 38 to deduct from and forward to Local 38 three percent of all Bickford's gross wages from his date of hire.[3] As part of the packet, Bickford also signed a "State of Michigan Declaration of Residency" form in which Bickford certified that the Madison Heights, Michigan address was his permanent residence. Bickford answered yes on the form to the question of whether he was a permanent resident of Michigan. The form stated, "To be a resident of Michigan, you must be domiciled in Michigan. Your domicile is your permanent home; it is the place to which you intend to return after any temporary absence. You have only one domicile." At the trial, Bickford testified that his permanent residence is Madison Heights, Michigan, but he requested the Employer send his W2 form to the Nevada address because in February he spends his time in Nevada due to the warmer weather. On the forms, Bickford listed his wife as his emergency contact and that she was at the Boulder City, Nevada address. He testified that was where his wife was located at the time. Bickford testified he has two residences, one in Boulder City, Nevada, and that his primary residence is in Madison Heights, Michigan.

Bickford testified that on Friday, May 2, around 10 to 10:30 a.m., Conner called Bickford and said Conner had just gotten off the phone with Local 38 Business Representative Calvin Hazelbaker. Conner said Hazelbaker had chewed Conner out because Conner hired Bickford in the position of fixtures, and Conner said to Bickford that, "I thought that you said that you were okay with the union?" Bickford responded that he was okay with the union. However, Conner replied that Hazelbaker said Bickford was not a member. Bickford said he never said he was a member of Local 38, that he was a member of Local 720. Bickford asked Conner if he wanted Bickford to call Hazelbaker, and Conner said he thought Bickford should call him.

On May 2, following his conversation with Conner, Bickford called Hazelbaker at around 10:30 a.m. Bickford testified he asked Hazelbaker "what's the deal?" Hazelbaker told Bickford that if Bickford was coming into a home local that Bickford should have called Hazelbaker first to get permission to work on the movie. Hazelbaker said he had other members who were not working and they should be hired first. Bickford asked Hazelbaker what Bickford could do to make it right. He testified Hazelbaker said that Bickford owed back dues and Bickford replied that he paid those back dues. Hazelbaker said he would have Hazelbaker's secretary Michele

[3] Bickford testified the payroll deduction consent form was presented to him by the Employer, not Local 38. When asked if someone told him he had to sign a dues checkoff form for this job, Bickford testified "I probably just did it. I did it just because that's how I -- that's what I've always done."

send a letter to the International to see whether Bickford owed any back dues to Local 38. Bickford testified he said that was fine but asked what they were going to do in the meantime. Hazelbaker said they should figure out what was going to happen with the dues. Hazelbaker said they will wait for a letter from the International to which Bickford said all right. Bickford testified that as far as he knew that was all that was going to happen that day. He testified that at that point the issue was back dues. Bickford later testified that in his first conversation with Hazelbaker on May 2, Hazelbaker asked if Bickford had a driver's license and Hazelbaker said one of the requirements for this is a residence and a driver's license in Michigan, and Bickford said he had both of those. Bickford testified Hazelbaker said he had not heard from Bickford in years and he did not know Bickford was still in the area. Bickford said when he was not receiving work from Local 38, he was not aware that he had to keep Local 38 informed of where he lived. Bickford stated in his pre-hearing affidavit that, "Cal also said he didn't even think I was in town anymore, and one of the issues was that I had to be a resident of Michigan."

Bickford testified he had a second conversation with Conner on May 2. Bickford testified, "I guess after lunch Mike Conner had had another conversation with Cal, and I guess Cal read him the riot act about having me –" Bickford testified that Conner said to him that there was an issue about Bickford being employed there because Bickford was not a member and members of Local 38, were not working yet. Bickford testified that Conner said he spoke to Hazelbaker about it. Bickford testified that Conner was worried about his reputation with Local 38; and Bickford told Conner that Bickford would call Hazelbaker and see what Bickford could work out.

Bickford testified he made two attempts to call Hazelbaker and Bickford left messages with Michele. Bickford testified Hazelbaker called Bickford back around 4:30 p.m. on May 2. Bickford told Hazelbaker that if Bickford needed to get a dual card, that Bickford would be happy to apply for membership with Local 38. Bickford testified Hazelbaker said they would see what happens with the dues first concerning the letter Local 38 was sending to the International. Bickford told Hazelbaker that Bickford was worried about Conner's reputation and Bickford asked if Conner was ok. Hazelbaker said Conner was ok. Hazelbaker stated he had already said what he needed to say to Conner. Bickford testified he spoke to Hazelbaker about other jobs he had done in Michigan. Bickford testified he said there was never a problem when he came in and worked on Real Steel and there was never a problem with any of the movies that Bickford worked on before Hazelbaker was the business representative. Bickford testified he said he did not know why when he came there to work before when he was not a member of any union there was no problem, and now that he was a member of the Las Vegas local there was a problem with him coming in. Bickford said he thought this was getting way out of proportion.

Bickford testified that, following his call with Hazelbaker, Bickford went on his scheduled vacation. On May 6, in the afternoon, Bickford received a text message on his phone from Conner. The text message from Conner reads as follows:

> We have had a busy day. Ralph my gut is wrenching. Yesterday I went down to talk to Cal face to face. I wanted to face not handling the situation correctly. Cal's version of 'we're good' is you settle up, then we can use you if and when we need to bring people in from out of town. Not starting back in with us on Monday. He still has local people calling and asking if they can get on the show. All these points he was making I had to agree with. I have not answered your calls because I have been trying to face telling you that I have to make this right. That's what Cal expects. This has really

been bringing me down. I don't want to hurt my friend, but we didn't handle it the right way. I'm sorry.

Bickford testified that, after he received the text message, he tried to call Conner. He testified he eventually reached him on May 6 or 7 and Conner "basically told me that he had to let me go and that I was not able to – I was not able to come back, you know, on Monday like I had planned." Bickford testified Conner said Bickford "wouldn't be coming back." Bickford testified Conner stated Hazelbaker told him that he had to bring in the local guys first, and if there was anything left over after everybody in the Union was working, then Bickford might be able to get in on the movie. Upon clarification, Bickford testified that, during the call, Conner used the term "local guys." Bickford testified the Conner did not use the word residents, and he did not use the word union. Bickford testified Conner did not talk to him about residency. Bickford testified Conner hired and fired him, and that no one from the Employer commented on his job performance.

Bickford testified he was paid for the week he worked at Sage and Milo as a local resident, not as a distant hire. Bickford testified he was not a distant hire. He also testified Conner never said to him there is a problem because Bickford was a distant hire. Bickford testified he was not aware of whether the IATSE constitution has any requirements related to going to working in the area of another IATSE local. Bickford testified he did not return to work for Sage & Milo in May 2014.

Bickford identified an email he received from Conner on July 8. Bickford testified he did not speak to Conner about the email. Bickford testified that, after he received the email, Bickford had conversations with attorney Steve Carroll from Warner Brothers Pictures about a reinstatement offer from the Employer. The email from Conner reads as follows:

> Ralph,
>
> This is absolutely the worst work situation I have ever been in.
>
> Whatever solution comes to the situation, I do not know anyone involved that I will not either be in trouble with or have caused trouble for. That list includes You, Local 38, The Rigging Electric Dept., The Set Decorating Dept., Local 38 legal representatives, National Labor Relations, Crown City Pictures, and Warner Bros. Labor Relations.
>
> They have all been in contact with me on, this matter. I have been interviewed and documented, even given the opportunity to check the accuracy of what is written. Each step of the way points out that I did things improperly and that I would ultimately be held accountable. When I was confronted with my misunderstanding of your status, you apologized to me, and told me the last thing you wanted was for me to get in trouble. I soon realized that my conversations with others were very different than your conversations with others and that the focus of wrong doing or not following procedures was on me. I had a strong sense of what was expected of me and found myself in a lose lose situation. We discussed it and you said you would walk if I was going to get in trouble over this. Then there was the appearance that everything was ok but I never had that sense of comfort, ever. Finally came the very loose agreement that you would leave. I will go further to say that if they need to say you we're let go then that rides on me. Nobody told me to fire you.
>
> I hope you realize how badly I felt about the situation. After thinking about it more, you said there were actions you could take but would not because I was involved, because of our friendship. Then came National Labor Relations and Local 38 legal to speak with me. Now I certainly was involved and feeling very much in trouble. Maybe that was not your intention but you were now taking action and that really troubled me

more and more. Being contacted over and over during the day. Pointing out more of how I should have handled the situation but didn't. And on a personal level adding a lot of stress to my job and dissolving whatever friendship remained between us.

Yesterday National Labor Relations wanted my help on who to talk to in production. I had to explain a little of how the movie industry is structured, then I called the production office myself and they had me talk to the production supervisor, who further told me what I should have done and how I should have handled the situation. Then he told me he had no knowledge of the situation so could not talk to NLRB and he gave me a contact and number for Warner Bros. Labor Relations that I passed on to NLRB. At the end of the day, I was contacted and told that we had to find a spot for you. I am sure Warner Bros. would rather pay you to work than to pay out some settlement.

I then talked to Rigging Electric about the current situation and what Warner Bros. said. I have been working with the same three guys, I like all of them, and they all seem pretty happy working for me and that is what is allotted to me. I would not think it right to displace any of them. Also, thinking back, none of them had the expectation to work for me. I have also had two members contact me recently about being available. That sort of takes me all the way back to the beginning. Shouldn't they be given the next opportunity. Rigging Electric said they can find you a spot but would be unsure of the duration, I admitted to them that I would not feel comfortable working with you. This whole thing is not sitting well with me, my self image, my choices, and our friendship. Coming back, we would both be surrounded by a lot of WTFs, especially after I've already had to try to explain why you aren't here anymore.
Rigging Electric, suggested I contact you...

I did need to, to say some of these things and we are wondering what you would like to get out of the situation. You are not obligated to say anything but I welcome a response to know what you are thinking and if the repercussions are what you expected: I only ask that you respond in writing just as I have been held accountable for what has happened and what I state. I'm not ready for a phone conversation. This is bringing me down more and more as it develops I'm sorry to say.
Mike Conner

2. Michael Conner's testimony

Conner has been a lighting technician for about 25 years. He works for different employers in the motion picture and television industry. Conner is a member of Local 38, and has been such for 13 years. Conner testified he was working for Crown City Pictures, a production company formed by Warner Brothers, on a movie using the code name Sage & Milo. Conner began working on the movie on April 4 and he testified he was just finishing up at the time of his testimony on December 4. Conner testified this is a major motion picture and it was a good opportunity for most people working in the production field to work on this picture. Conner worked there as a department head and had the title of fixture foreman.

Conner testified he had known Bickford for about 20 years. Conner spoke with Bickford in mid to late March in that Bickford called looking for work for the Sage & Milo production. Conner testified he had several conversations with Bickford about the show prior to Bickford starting to work there. Conner testified that, during their second conversation, Conner explained to Bickford that a lot of people were interested in working in the fixtures department and it was not a certain opportunity for Bickford. Conner testified Bickford was willing to come and live with his mother in Michigan for the duration of his employment. Conner testified that Bickford had a Michigan driver's license, and Bickford also told Conner that Bickford was good with the union. Conner testified Bickford was in Las Vegas at the time of this

phone call. Conner testified that following this call he had other conversations with Bickford and that around a week or less before Bickford started working for the Employer, Conner informed Bickford that he was hired. Conner testified Bickford began work for the Employer on April 28. Conner testified that he had two other hires starting on that date and they were both Local 38 members. Conner testified that, at the time Bickford started, Conner knew Bickford was going to take a pre-planned Florida vacation from May 5 to May 9. Conner approved the vacation.

Conner testified that on Friday morning, May 2, which was at the end of Bickford's first week of work, Conner received a call that went to voice mail from Local 38 Business Representative Calvin Hazelbaker. The message was for Conner to call Hazelbaker as soon as possible. Conner returned the call on May 2. Conner testified that, during his call with Hazelbaker, "Cal wanted to know why I had hired off roster, which surprised me because I thought when Ralph had told me he was current with the union, that he meant Local 38 in Detroit." Conner told Hazelbaker that when Bickford had told Conner that Bickford was good with the union, Conner thought that Bickford meant Local 38. Conner testified Hazelbaker told Conner that Hazelbaker thought Bickford owed Local 38 money and Hazelbaker "seemed pretty upset that I had hired this guy." Conner testified that Hazelbaker "said that he also had people that were still calling looking for work on the show and that, you know, that I should've checked to make sure that Ralph was on the roster, which I had not done." When asked what roster Hazelbaker was talking about Conner testified, "It's a member roster of people that are available or that have current status with Local 38 that are members and would be available to work." Conner testified that during this conversation he thought Hazelbaker said he wanted to check to see how much Bickford owed. Conner testified "so I think we actually kind of paused our conversation and then spoke again after he found out, you know, what that amount was or whether he did indeed owe money." Conner testified that during this call Hazelbaker said, "do we need to have a Teamster have an accident?" Conner testified "it was said in a joking way, but it's something that stuck in my head as to why I acted the way I did as result."[4] Conner testified that he and Hazelbaker discussed that when Bickford left Michigan and Local 38 to go to Las Vegas that Bickford left on bad terms.

Conner testified that he had two calls with Hazelbaker that morning. Conner testified that, during one of the calls, he was almost certain Hazelbaker asked what Bickford's intentions were and Conner informed Hazelbaker that Bickford had a Michigan driver's license. Conner testified that Bickford's residence must have been discussed with Hazelbaker, but he did not recall whether the discussion took place in the first or second call. Conner did not testify to a certainty that Bickford's residence was discussed, rather he testified "I think it was." Conner testified Bickford's residency was not the focus of the conversation.

Conner testified that, after his first conversation with Hazelbaker on May 2, Conner spoke to Bickford. Conner testified he confronted Bickford on the fact that Bickford had told Conner that Bickford was good with the union, and now Local 38 was telling Conner that Bickford was not current with his membership, that he owed money, and that this had put Conner in a bad situation. Conner testified this was because Conner hired Bickford under the assumption that Bickford's Local 38 membership was good even though Bickford was coming

[4] Conner testified he interpreted Hazelbaker's Teamster remark as a joke, "but I also felt the message of what I thought it meant." Conner testified, "I thought there was a message to it. I thought it was said jokingly with a message." He testified, "it's just part of why I felt I had done something wrong." Conner testified he did not take the remark as meaning if he did not do something with Bickford that something bad would happen, but the remark affirmed Hazelbaker's statement that Conner had done something wrong by hiring off roster.

from out of town. Conner testified, "I didn't feel he was being dishonest. I just, you know, suddenly we had this, you know, I had misunderstood what he meant --and would have treated the situation different." Conner testified Bickford said the last thing he wanted to do was to get Conner in trouble. Bickford said if it was going to get Conner in trouble Bickford would walk away from the job. Bickford said he would call Hazelbaker. Conner testified that Bickford did call Hazelbaker, and after placing the call Bickford acted like all he needed to do was pay the money owed and everything would be good. However, Conner testified that based on his discussions with Hazelbaker that Conner thought things were not good that what Conner had done was wrong and that Conner needed to fix the situation. When asked what he thought he had done wrong, Conner testified pertaining to Bickford , "Hiring him in front of 38 members."

As set forth above, Conner testified he spoke to Hazelbaker a second time on May 2, and he was not sure who initiated the call. Conner testified the conversation was similar to the first call in that he was told he should have checked the roster, that he should have verified whether or not Bickford was a member. He testified "we basically went through a lot of the same things." Conner testified that, on May 2, he indicated to Bickford that things did not seem right. Conner testified that Bickford said he would call Hazelbaker a second time. Conner testified Bickford later came up to Conner while he was in a meeting, and Bickford gave Conner "a thumbs up like everything was okay, and just said, we're good." Conner testified he felt he was trapped in that he could not speak with Bickford but Bickford was giving him a thumbs up, while Bickford was leaving for the day and going on vacation.

Conner testified he felt uneasy and on Monday, May 5, Conner went to see Hazelbaker at the union office. Conner testified, "We talked a little bit more in detail of what some of the formalities would be as far as somebody coming in from out of town, things that I should have done, calling to check the roster, but also calling to declare that somebody is coming from out of town to work, which is something either I should have done or something Ralph should have done, or even possibly had his BA call Cal." Conner testified this was what Hazelbaker was telling him. Conner testified they talked about "some of the other, you know, just situations where other people were trying to get on the show, that he gets calls routinely for people looking for work." Conner testified they spoke about whether Bickford had any special qualifications. Conner said Bickford did not have special qualifications where Conner could not have used someone else to do the work. Conner testified, "So a lot of the questions I had to agree to and say, yes, you know, I should have or I could have. You know, these are all things that were making me feel like I should have done something differently." Conner testified Hazelbaker "said that when Ralph pays his dues up, that doesn't mean he has 38 status or that he's once again a 38 member, and he said that also when Ralph came back after he paid his back owed money that he could go on an available status, but it would be if and when we needed to use somebody from out of town; he shouldn't expect to be coming right back to work that following Monday after his vacation." Conner testified, "That sums up most of everything I can remember." Conner testified he thought what Hazelbaker was saying was, "that Ralph does not necessarily have work back here until we either exhaust the people that are looking for work or that there's some other opportunity for him." Conner testified that exhaust what people was not said, and that the only thing Hazelbaker said "that he still had people that were looking to work on that show."

Conner later testified that when he and Hazelbaker met face-to-face, Hazelbaker told him that Bickford simply paying his back dues was not going to make everything right for Bickford to start working again on Monday when he returned from his vacation. Conner testified that, from his conversation with Hazelbaker, Conner's understanding of the problem was that

Bickford "was not a roster member." Conner further testified that, his understanding from his conversation with Hazelbaker, was the problem was that Bickford was not a member of Local 38. Conner testified he would not have let Bickford go had he not been confronted about hiring him by Hazelbaker. Conner testified he may never have known that Bickford was not a member of Local 38. Conner testified he was thinking of the roster as Local 38 members. Conner testified he did not know if they made a distinction between who was on the roster and who were local 38 members. He testified, "I am thinking of the roster as 38 members." Conner also testified he would not have hired Bickford if he thought he was a distant hire.

Conner testified he sent Bickford a text message on May 6. Conner testified the purpose of the text was to inform Bickford what Hazelbaker and Conner had discussed during their May 5 meeting. Conner testified, "I was letting him know that things were not okay and that I was having a lot of trouble with what I had done. I felt I had done things wrong, and that I thought that I was asking Ralph to step away from the situation like he had said he would if it would get me in trouble." Conner testified he did talk to Bickford eventually and it was close in time, but after he sent Bickford the text message. Conner testified that Bickford talked about maybe leaving the job for a while and coming back possibly in another department. Conner said that was up to him because Conner could not force him on another department. Conner testified, "the whole time I was more interested in him just accepting that something was wrong and hoping that he would feel the same way I did and back away from the position." Conner testified that Bickford did not want to leave the job stating, "He was looking for other ways to solve it, …." When asked if at some point Conner terminated Bickford, Conner replied, "I felt that it actually at some point became a little more mutual, that he was going to leave the position, but ultimately, you know, I was asking him to do that." Conner testified, "I asked him to leave the position, …". Conner testified that, "We talked about the fact that he had said that he would step away if it was going to get me in trouble. I felt like I was in trouble. So we basically just hashed through all these things, and then Ralph came to the realization that I was asking him to leave, and he accepted that." Conner also testified that before he decided not to bring Bickford back from vacation in May, Conner talked to Dave Theelhart, the rigging/electric best boy, and told him he was not going to bring Bickford back. Conner testified that before he talked to Bickford, he had decided not to bring Bickford back, and he informed Theelhart that he was not going to bring Bickford back.

Conner testified he spoke to a Board agent on June 13, concerning this case, and that she sent an email confirmation of their conversation. Conner testified that the email the Board agent sent seemed sketchy as far as the details, and there were things Conner felt were not represented correctly so he took a lot of time and revised it, including adding information to clarify things then returned the corrected email to the Board agent. Conner testified his corrections appear in red on the returned email, which he sent on June 18 to the Board agent, and which was entered into evidence. The email, as edited by Conner, reads as follows:

> The changes and additions in red are to more accurately describe this case to the best of my recollection. Mike Conner
>
> Dear Mr. Conner:
>
> This email will confirm our telephone conversation from today, Friday, June 13, 2014.
>
> You stated that Ralph Bickford originally called you before the movie job started up in Pontiac to see if you knew anything about it. Bickford wanted to work in fixtures on the job. You both thought the Employer was going to bring someone in to head up the fixtures department. Later, because the production company was insisting on as many local hires as possible you were asked and ended up heading up the fixtures

department. The residency of employees is important to the Union the Employer for qualifying for the MI State Incentives. The Local Union in the Detroit area is IATSE Local 38. Bickford told me that he was all good with the Union, that he still had a Michigan drivers license and that if he was hired he would come in and live with his mother. I assumed that Bickford had maintained his membership with Local 38 I would be hiring someone with local qualifications. When Bickford found out I had been hired, he contacted me with the expectation to be hired. At that point I not only was not allowed to hire anyone just yet but I also had many other inquiries from other Local 38 members who were interested in working with me on Fixtures. Bickford understood and I told him I would let him know the situation when I was allowed to have additional people working with me. When I was told I could hire additional people, I contacted Bickford and two other Local 38 members.

The misunderstanding between you and Bickford was that when he said he was all good with the Union you thought he meant he was all good with Local 38, your home local in Michigan. But Bickford meant he was all good with the International and up to date and in good standing in Las Vegas, his home local. Bickford's intention was to work on the Pontiac job under his Las Vegas card.

Bickford worked on the Pontiac job for one week. When he came on the job he told you he had a preplanned vacation and it was approved by you. Bickford only needed to know where he would depart from in order to secure his travel.

Near the completion of the 1st week you got your first phone call from the Union, Cal Hazelbaker, the Local 38 BA. Cal asked me why I was hiring off-roster. He said there are still people in town that are looking for work. I was also told that Bickford owed money to Local 38. I told Cal that I had no idea that Bickford was not current with his Local 38 membership and up to date. Cal did not tell me to get rid of Bickford he just said it was a problem that I hired off-roster when there were local members looking for work, and that Bickford was not in good standing with Local 38. When an employee is coming to work on another card he is supposed to contact the Local Union as a formality to gain permission, in some Locals the outside member can talk to his BA and he calls the union where the work is being sought, and the 2 BAs talk to each other to ok the member going to another local.

I was told that when Bickford left Local 38 to move to Las Vegas, he did not leave on good terms and with no apparent plans to return. I was also told that I should have checked the roster to verify Ralph was indeed a Local 38 member and that I should have made a call to the hall myself to let them know who I am hiring.

After I talked to Cal, I talked to Bickford. We talked about the misunderstanding. I told him all the things that Cal had told me. I told him we had both done things improperly. I told him that I needed to do the right thing here. I told him it was not right for him to work ahead of other members if he was not in good standing with Local 38. Bickford told me the last thing he wanted was for me to get in trouble over this. He said he would call Cal and see if he could fix things. After talking to Cal, Bickford told me that he needed to pay the money that was owed and then he would be able to work. In an additional conversation with Cal, I still felt like the situation needed to be corrected. Bickford's conversations with Cal seem to go ok but I still felt very much in trouble and that I had done things improperly.

After Bickford left to go on his vacation, I went down to talk to Cal face to face. We revisited all the points of the hiring procedures and I further admitted that I had done things incorrectly. I told him that Bickford is under the impression that if he pays his money owed, he would be good to continue working. Cal clarified that Bickford, upon paying money owed would be able to work, if and when we needed extra guys beyond our local roster of qualified members. Cal told me if Ralph had special talents that I

could not find locally that might be different but I admitted that I could try members that I had not worked with first.

I contacted Bickford to let that it was not a simple pay and return to work. I told him that I needed to correct the situation, that I didn't want this kind of mistake to follow me. We talked for awhile and Bickford realized I didn't want to but I was letting him go. We talked about him waiting a few weeks to see if things got busier but I told him I thought it would be better if he checked other departments for their needs and that my next call if I needed to find labor would be to our office.

He agreed, he said he could make a big deal about it but he would not do that because I was involved. But then a few weeks later I found out he filed this charge against the Union.

Since Bickford's departure, the local member that was filling in for him has continued as part of my base crew and any additional hires have been available members needing the work.

No documentation was provided to Bickford at the time he left the Pontiac job.

Conner testified that when Bickford did not come back in May, Conner hired, in his place, the person who had filled in for Bickford while he was on vacation. Conner testified that Bickford's replacement, along with the other two department employees, were there for the whole time. Conner testified that, at the time of his testimony, Bickford's replacement is no longer there in that he left in late October to work on another show. Conner testified the employee left on his own accord. Conner testified the employees who continued to work for him in fixtures after Bickford was gone started at 10 hours a day and then in about 2 or 3 three weeks went to 12 hours a day. Conner testified that there were no weeks where people were missing days because they did not have work. Conner testified that once they went to 12 hours they never went below that. Conner testified that they were paid for holidays such as Memorial Day and July 4 whatever was standard in the contract. Conner testified the employees worked before and after the holiday, as required, to allow them to be paid.

Conner testified he learned at some point in July that Bickford might return to work at the Employer. Conner testified he received a call from Carroll from Warner Brothers labor relations. Conner testified he was called by Production Supervisor Matt Hirsch after Conner spoke with Carroll. Hirsch told Conner to find a position for Bickford. Conner testified at this time they were decreasing rather than adding to their numbers. Conner testified he talked to the rigging/electric best boy and told him that he had a situation. Conner testified they talked about possibly bringing Bickford in for a very temporary amount of time. Conner testified, "I had my three guys now, I had replaced Ralph, so I had those same three positions, members that were working very well for me. I was very satisfied, very happy with it." Conner testified that Bickford's return was not completely up to Conner even though Hirsch had turned it that way. Conner testified that each of the departments had their own budgets and if they really wanted Bickford back they should have found a position for him as opposed to just telling Conner to solve it. Conner also testified he thought Bickford's returning to work "would be very uncomfortable." He testified that he told Bickford that. In this regard Conner, "I decided I needed to send Ralph a letter because I didn't feel it was right to just bring him back." On July 8, Conner sent Bickford an email, the text of which appears above. Conner testified Bickford never responded to Conner's July 8 email.

While Conner testified no one ever told him to fire Bickford, Conner testified as follows:

Q. BY MS. NIXON: However, you indicated to Mr. Bickford in your text that you had to make things right.

A. Yes.
Q. What were you making things right about?
A. The fact that I wouldn't have hired him if I had known he was not 38.
Q. Because why?
A. Because I thought that was a guideline that I should follow.
Q. Okay.
JUDGE FINE: Where'd you get that idea?
THE WITNESS: Partially because just the way things are done and what I feel is right about putting people to work that are members.

Conner testified that it was his understanding, and that he may be incorrect, that Local 38's union roster is "a list of our local members." Conner did not know if Local 38's roster contains nonunion members. Conner testified he knew the production company wanted to hire local residents, and that the film was resident-sensitive. Conner was also aware that there were collective bargaining implications in hiring local residents. Conner testified that in his initial phone calls with Bickford one of the things Conner talked about with him was residency. Conner testified that Bickford assured Conner that Bickford was going to live with his mother, and Conner knew Bickford's mother was a Michigan resident. Conner testified that when Bickford was making his employment inquiries with the Employer that the Local 38 members interested in working there were local residents. Conner testified he understood Bickford had moved out of Michigan and that he was a resident of another state. Conner testified he thought that if Bickford came back and lived with his mother that Conner would not be using a distant hire. Conner testified that he was not focused on Bickford coming back and living with his mother as it related to Bickford's being a Michigan resident "as one of the things that I felt I had done wrong, no." Conner testified that his focus was that he had not hired someone off roster and "that he was not a 38 member." Conner testified that he was assuming that being on the roster was the equivalent with Local 38 membership. He testified he does not know whether that is accurate.

Conner testified that Hazelbaker told Conner that he had to hire off roster. Conner testified, "He said what was I doing hiring off roster." Conner testified that when Bickford told Conner that Bickford was good with the union Conner thought "he was current with his 38 membership." Conner testified that, "Often people from other states do keep their cards with the state that they originated in or with a state that they had worked in. It's very common to have dual cards for more than one local." Conner testified that Bickford did not have to be a current Local 38 member to be hired on this job. Conner testified, "I know that now, yes. After I read through the Warner Brothers policy for right to work state, I was very clear on a lot of things that I was not clear at the time that these -- conversations were happening." Conner testified he read the Warner Brothers policy after Bickford's unfair labor practice charge was filed. Conner testified that, Hirsch released it soon after "they were confronted on this issue." Conner testified he read the policy after Bickford stopped working and that before that he did not know. Conner testified that prior to that time, 'I had not educated myself on all the rules of right to work."

Conner testified that what he thought Bickford had done improperly was not announcing to Local 38 that he was coming in to work. Conner testified that Bickford should have told Local 38 that he was coming into town because Bickford knew he was member of the Las Vegas local. Conner testified if Bickford, "was indicating to me that he was good with the union and was a local member of the Vegas union, then he should have been declaring that he was coming in to our local." When asked what Conner did wrong, Conner testified, "I hired somebody from another local before I was -- that's my own moral feeling, I guess, is that I –" "Before I hired

somebody that was a 38 member." When asked if this was his own set of ethics on the issue, Conner testified, "Yes. Because I also know there are plenty of people from out of town working on this show, but I just felt that I should be finding somebody that's a 38 member before that." In his June 18 statement, Conner wrote that, in a conversation with Bickford, "I told him that I needed to do the right thing here. I told him it was not right for him to work ahead of other members if he was not in good standing with local 38."

Conner stated in his June 18 mail to the Region that Conner told Hazelbaker that Bickford was under the impression that if he paid his money owed he would be good to continue working. Conner stated in the email that, "Cal clarified that Bickford, upon paying money owed would be able to work, if and when we needed extra guys beyond our local roster of qualified members." When asked at the hearing if Hazelbaker was telling Conner that local residents needed to be put to work before Bickford, Conner testified, "I took it as members." Conner testified that he was being told by Hazelbaker at the face-to-face meeting that Bickford's paying his back dues was not going to flip the switch to get him back to work. Conner testified he did not recall the word "residents" being used by Hazelbaker during the conversation. Conner testified that he understood that Hazelbaker told him that Conner had to hire qualified people off the local roster. Conner testified he repeated the word roster in his statement because that was the first word Hazelbaker used when he called Conner.

B. Respondent's witness

1. Calvin Hazelbaker's testimony

Hazelbaker has been the business manager or representative for Local 38 since March 1, 2010. He is the chief operating officer of Local 38. Hazelbaker testified Local 38 has contracts with various entities such as television stations, theaters, and arenas. Hazelbaker testified that for non-movie productions such as these, Local 38 operates an exclusive hiring hall. Hazelbaker explained Local 38's referral procedure for these entities is Local 38 is informed of the number of openings and then refers people from its referral list to be hired by the employer. Hazelbaker testified there is no restriction on a stagehand getting on the referral list based upon their union membership. Hazelbaker testified that Local 38 refers both Local 38 members and nonunion members for these jobs.

Hazelbaker testified that for movie productions such as Sage & Milo, Local 38 does not have a referral system like the one it uses for the above venues. Hazelbaker testified that Local 38 supplies movie productions with a roster and they pick who they want to use or interview. Hazelbaker testified that the term "roster" as applied for a picture such as Sage & Milo involves the national contract negotiated by the International Union. Hazelbaker testified the national contract requires that when a production company comes to Local 38's jurisdiction, Hazelbaker gives them a list of qualified people which they can use as a reference for hiring. The motion picture does not have to use anyone from Local 38's referral list as they can hire who they wish. Hazelbaker testified they are obligated to look at the list before they start hiring. Hazelbaker testified he usually gives the roster to a motion picture company before they come to town as they call Local 38's office and ask for a roster. Hazelbaker testified that Crown City is a party to the national agreement because Warner Brothers is signatory to that agreement. He testified that often a production company is formed that only exists for the duration of a film, and Warner Brothers has such a relationship with Crown City.

Hazelbaker identified Local 38's film and television roster. Hazelbaker testified the information on the roster changes as people leave and come to town. Hazelbaker testified there is no requirement that an individual be a member of Local 38 member to get on Local 38's roster for the movie industry. He denied that he has discriminated against anyone in putting people on the roster based on whether they are member of Local 38 or any other local union. Hazelbaker testified there are people on the roster who are not affiliated with any union, and there are people on the roster that do not live in the Michigan area. Hazelbaker testified he gave a copy of Local 38's then existing roster to the production company for Sage & Milo a few months before May. Hazelbaker testified that to get on the roster you have to have experience and film credits for the listed positions. Hazelbaker testified the roster contains the crafts Local 38 represents. He testified Local 38 has jurisdiction in their area over all aspects of motion picture work except for work covered by the Teamsters. Hazelbaker testified no one has to pay a fee to get on the roster.

Hazelbaker testified Sage & Milo was one of the biggest, if not, the biggest production that came into Local 38's area, and it was also one of the longest duration films. Hazelbaker testified that in terms of the benefits of working on the film that if an employee could put six months or more together, for most people that would make their year. He testified he would characterize working on this film as a plum assignment. Hazelbaker testified, "we want as many local people working as we can." He testified, "Including Local 38 people, but that's how the crew base gets built. The bigger the crew base we have, the more films we'll be able to get. So there are non-affiliated people working on the show, there's -- and in construction we've reached out to the Brotherhood of Carpenters and the Plasterers local, and they have had individuals come to work under our contract who have never joined the IA." Hazelbaker testified the Sage & Milo film was being shot under Michigan state incentives. He testified the residency of employees is important to the Union.

Hazelbaker testified that "distant hire," is a term in the collective-bargaining agreement. Hazelbaker testified for a distant hire the employer would pay their transportation to Local 38's jurisdiction, provide them with a hotel room, and pay their per diem. He testified a distant hire's workdays are portal to portal, meaning they get picked up at their hotel and start on the clock at that time. They remain on the clock until they arrive back at their hotel. Hazelbaker testified for a local hire your day starts at your call time on the set and it ends at wrap. He testified there is no per diem or travel paid for a local hire. Hazelbaker testified a distant hire is more expensive than a local hire for a movie production company like Sage & Milo.

Hazelbaker testified Bickford was an expelled member of Local 38 after 2007. Hazelbaker testified Bickford was referred by Local 38 to non-movie production jobs between 2007 and 2010. Hazelbaker was not the business agent at that time. Hazelbaker testified he was the business representative at a time when Bickford was an expelled member of Local 38, but worked in Local 38's jurisdiction. In this regard, Hazelbaker testified Bickford worked on the films Red Dawn and Virgin on Bourbon Street and Hazelbaker did not make any effort to contact the employers to have Bickford removed from those films. Hazelbaker testified Local 38 accepts cash for dues, for which it provides the individual with a receipt. Hazelbaker testified Local 38's records show Bickford still owed around $150 in back dues, which indicates the local does not have a receipt showing Bickford paid those dues. Hazelbaker testified these dues were owed since Bickford was expelled in 2007.

Hazelbaker testified he called Conner about Bickford's employment on the Sage & Milo job. Hazelbaker testified "I asked him why he had hired Mr. Bickford as opposed to hiring a local guy to do the job." Hazelbaker testified, "in my conversation with Mr. Conner, I was

under the impression that Mr. Bickford was from Las Vegas, Nevada, that after he left our jurisdiction around '10 or '11, that that's where he lived. I hadn't seen him…". Hazelbaker testified someone from the set told him Bickford was working there, which prompted Hazelbaker's call. The following exchange took place:

> JUDGE FINE: Well, when you talked to Mr. Conner, what did you say to him?
> THE WITNESS: I asked him did he hire him, and he said he did, and then I said, well, why would you hire him when there's other local people to hire?
> JUDGE FINE: And that was what you said?
> THE WITNESS: Yes, sir.
> JUDGE FINE: Did you explain what local people was?
> THE WITNESS: Well --
> JUDGE FINE: Did -- just did you explain it to him any further is what I'm trying to find --
> THE WITNESS: No.

However, Hazelbaker also testified that during the conversation with Conner, "I expressed my concern about Mr. Bickford being in from Las Vegas, and I was assured that he could live at his mother's house so that it would be okay." Hazelbaker testified he was assured of this by Conner. Hazelbaker testified he took issue with this stating he said, "he can't be treated as a local just because his mother lives in our jurisdiction." Hazelbaker testified, "I expressed my opinion from my understanding that Mr. Bickford lived in Las Vegas, and Mr. Conner assured me that he could live at his mother's and thus be considered a local." Hazelbaker testified, "I said that that's not acceptable." Hazelbaker testified he told Conner that Bickford did not qualify and because his mother lived in Michigan did not make him a local hire. Hazelbaker testified Conner said Bickford said he was good with the Union. Hazelbaker testified, "I said, well, he's still an expelled member here, but I'll, you know, find out what's what about Mr. Bickford from my end." Hazelbaker testified he raised the issue with Conner that Bickford was in arrears in his dues or that Bickford was an expelled member. Hazelbaker testified this was not a disqualifier for him in terms of Bickford's employment on the job. Hazelbaker testified, "I told Mr. Conner that I thought Ralph was under the -- Mr. Bickford was under the opinion that if he paid the $150 or whatever that amount was, that that would be all that was necessary. I told Mr. Conner he would have to wait until we were crewed up, which I gave him an estimate of a couple weeks. At the rate that they were starting to hire electricians, we would be out of qualified, available people in 2 weeks -- 10 days I told him." Hazelbaker testified Conner said he would talk to Bickford and get back to Hazelbaker. Hazelbaker later testified he told Conner that if Bickford, "paid his back indebtedness to the Local, that would not guarantee him work in our Local's jurisdiction." He denied telling Conner that Bickford could be hired again if no other Local 38 guys were looking for work. Hazelbaker testified his concern about the hiring of local residents of Michigan was the focus of his conversation with Conner.

Hazelbaker testified Conner came to the local hall to speak to him about Bickford. He testified he did not have any discussion with Conner that was different from their first discussion. He testified that, "we pretty much talked about the -- that he couldn't jump ahead of local guys and be treated as a local, that it wasn't right." Hazelbaker then testified, "I probably didn't say 'guys'; I probably said 'locals.'" Hazelbaker testified Connor did not ask him for an explanation. Hazelbaker testified when he used the term locals he meant, "residents of our jurisdiction."

Hazelbaker testified there was no restriction on Sage & Milo hiring Bickford and paying him as a distant hire. Hazelbaker testified, "Once we're crewed up, there's a number of former

Michigan residents who have a place to stay that we, in order to help the producers, we'll occasionally say, if you need this guy and he's got skills, we'll turn a blind eye once everybody's hired up. It's not unusual, but it's not standard." Hazelbaker gave that explanation as to when Local 38 might allow Sage and Milo to hire Bickford and pay him as a local hire. Hazelbaker testified, "I asked Mr. Conner if they – if Mr. Bickford had a skill set that we could not replicate locally, in which case I would understand why they had to have him in that job. Mr. Conner indicated that there were local people available who could do the same job that Mr. Bickford was hired to do." Hazelbaker testified he asked this question because if there were circumstances that the film needed Bickford's talent to move forward, then that would make cause for an exception for him to not have to wait until all the local people were hired. He testified, "We still would then have to address why he wasn't being treated as a distant hire, but I would understand that his skill set was needed in the production."

Hazelbaker testified he did not recall making a remark about the Teamsters to Conner, but he did not deny that he made such a remark. Hazelbaker testified, "I'm often perhaps a bit sarcastic or flippant, and I'm often someone who might make a joke at the expense of the Teamsters." Hazelbaker explained IATSE and the Teamsters work together especially on the motion pictures and in concerts. He testified it was not unlike other groups that work together, one group seems to make fun of the other a bit. Hazelbaker testified he did not intend to threaten Conner. He testified he never made any reference to retaliation or interruptions of work to Conner.

Hazelbaker testified he only talked to Bickford one time concerning these events and that was a phone conversation. Hazelbaker testified, "I told Mr. Bickford that I thought he still owed us some money. I think by the time he spoke to me, I had talked to our office manager, Michele Shuman, and she indicated that the record showed that he owed once again about $150 in that neck of the woods,…" Hazelbaker testified when he expressed the number to Bickford, Bickford, he knew the number as an accurate number and offered to pay it when he came back from Florida. Hazelbaker testified the Union did not have a record of Bickford previously paying the money. Hazelbaker testified Bickford did not claim he previously paid the money. Hazelbaker testified, "I think -- as I recall the conversation was we both kind of thought that it was likely that he still owed the $150."

Hazelbaker testified he did not recall saying anything else to Bickford about his work at Sage & Milo. He testified they only had the conversation about the dues. Hazelbaker testified he did not recall talking with Bickford about his being from out of town. Hazelbaker testified he did not mention that to Bickford because that was between Conner, the person who hired Bickford, and Hazelbaker. Hazelbaker testified the call with Bickford was pretty short estimating it was around five minutes in length. Hazelbaker testified he did not recall stating to Bickford that he had not heard from him in years and that he did not think Bickford was still there, but he testified that could have been part of the conversation. When asked if he had a discussion with Bickford about his residence or his driver's license, Hazelbaker replied, "I may have mentioned that I thought he was still out in Las Vegas." When asked if Bickford stated anything about where he resided, Hazelbaker responded, "I believe he told me he was a member of Local 720 in Las Vegas." Hazelbaker testified this discussion concerned Bickford's job status in Michigan stating, "that's how we came to the -- me finding out that Mr. Bickford had joined the local out in Las Vegas." Hazelbaker also testified he did not know one way or the other if Bickford told him that Bickford had a Michigan driver's license. He testified he did not believe Bickford told him that he was a resident of Michigan during their conversation, although he testified it may have happened.

Hazelbaker testified Local 38 refers people as long as they live locally and Local 38 has no objection to the Employer hiring someone who is local whether or not they are a union member. He testified he was concerned about Bickford's past dues because part of Hazelbaker's job is to look out for Local 38's interests. Hazelbaker testified, "If he's here working in our jurisdiction and he owes us some money, I feel obligated to ask the gentlemen could he see his way fit to pay the money he owes us." Hazelbaker testified he did not raise the issue of Bickford's past dues when he worked on Red Dawn or Virgin on Bourbon Street stating "I may not have at the time been aware that he hadn't paid."

Hazelbaker testified he had no discussion with Conner about whether Bickford could return to work at the Employer after the Board charges were filed. He testified he never indicated to Conner that Local 38 would have a problem with Bickford's reinstatement. Hazelbaker testified there is a practice or policy that when individuals who are members of other IATSE locals come to work in the jurisdiction of another local for them to call and ask permission to work in that local's jurisdiction. Hazelbaker testified Bickford did not call him prior to Bickford's coming to work at Sage & Milo. Hazelbaker testified this policy would apply to Bickford since he is a member of IATSE. Hazelbaker testified the call and request permission requirement is a provision of the International Union's constitution. However, Hazelbaker testified there is no policy that requires the Employer to notify Local 38 before it hires a nonmember of Local 38. He testified concerning the incentives for the motion picture industry there is no requirement that the Employer hire only Michigan residents.

Hazelbaker testified the evidence he had in May when he talked to Bickford and Conner that Bickford was not a resident of Michigan was, "One, he was coming from Las Vegas where he's a member of their local; two, Mr. Conner said that he would be able to use his mother's house as a residence, which would indicate to me that his residence was not at his mother's house but in Las Vegas, Nevada." Hazelbaker testified he did not believe he spoke to Bickford about where he was staying in the Detroit area. He testified rather they spoke about his being from Las Vegas. Hazelbaker testified he did not know whether Bickford had a Michigan driver's license. Hazelbaker testified that, "I inferred from the fact that he could use his mother's house as his address as a way to dodge distant hire provisions of the contract." Hazelbaker testified Local 38 does not receive any money from the state when a movie production comes to town. He testified Local 38 does not receive any government benefits other than the opportunity for employment. He testified Local 38 receives dues or fees from employees once they work within Local 38's jurisdiction for this particular employer, although Michigan became a right to work state around a year ago. Hazelbaker testified there were Local 38 members calling him to get jobs on the Sage and Milo production.

C. Credibility

On the whole, I found Bickford to be a credible witness, who testified as best his memory would permit. I have taken into consideration that, in the past, Bickford misrepresented his residency status in seeking employment on a one time basis in Ohio. However, he readily admitted the misrepresentation during this proceeding, explained why he did it, and did not attempt to cover it up. On the other hand, in the present case, Bickford informed Conner in advance of his being hired that he was in Nevada during their phone contacts and that if given the job Bickford would travel to Michigan and live in his mother's home. Bickford had a Michigan driver's license, his vehicles were registered in Michigan, and over the years he had maintained a presence in the state in terms of work, and vehicle ownership. He accurately depicted in his employment application with Employer both his Michigan and Nevada connection, and it was sufficient for the Employer's purposes to hire him as a local resident. While he certified

Michigan was his domicile in the application documents, he had a longer connection with Michigan than he did with Nevada, and it is not within my province with respect to this decision to resolve any dispute the parties or the state of Michigan might have with Bickford in terms of his residency status. Moreover, Conner who terminated Bickford, testified residency was not the cause of the termination, nor as Connor testified was Bickford residence the central subject of Union official Hazelbaker's complaint. Therefore, having observed his demeanor, I have credited Bickford's testimony concerning his hiring by the Employer, and the events leading to his termination.

Conner impressed me as a bright individual. However, he testified as someone who was between a rock and a hard place. He had certain loyalties to Bickford as a long time friend, but he felt mislead by Bickford when he said he was good with the union, when Bickford did not disclose he was a member of the Las Vegas local, as opposed to being a member of Local 38. Conner, himself a long time member of Local 38, had seen Hazelbaker attempt to interfere with Bickford's employment status, and thus as a matter of self-preservation, he took Local 38's side of the dispute over Bickford's by the fact that he discharged Bickford, and then wrote Bickford a lengthy email where he indicated a preference for Local 38 members for hiring in the future, and cast doubt to Bickford as to the viability of Bickford's returning to work for the Employer. I also note that it stated in Conner's July 8 email to Bickford that Conner had been contacted by Local's 38's legal representatives, and I have concluded that, while he did not outright misrepresent what transpired, Conner shaded his testimony in an effort to coincide with the nuanced defense presented by Local 38. This will be explained in more detail in the analysis section.

I did not find Hazelbaker's account to be as accurate as it might have been. First, I have credited Bickford that he had two phone calls with Hazelbaker, rather than one as Hazelbaker contended. In this regard, Conner had informed Bickford that Bickford's initial call to Hazelbaker did not resolve the matter, Bickford stated to Conner he was going to call again, and it was clearly in Bickford's interest to follow through and make the second call to Hazelbaker as he credibly testified he did. I have also found Hazelbaker's recall of his contact with Bickford to be hazy at best. Hazelbaker testified that in his conversation with Bickford that Bickford admitted he owed Local 38 money; however, I have found Bickford's account that he asserted he had paid the back dues, and Hazelbaker was going to investigate the matter to be more convincing. Hazelbaker also testified that he did not recall saying anything about Bickford's work for the Employer to Bickford or talking to Bickford about his being from out of town. He initially testified that he only had the conversation with Bickford about dues. He then testified he may have discussed Bickford's being in Las Vegas with Bickford, and that Bickford told him he was a member of Las Vegas Local 720. He then could not recall whether Bickford told him he had a Michigan driver's license, or whether Bickford stated Bickford was a Michigan resident, admitting it could have happened. I therefore, considering their demeanor, have credited Bickford's description of his conversations with Hazelbaker over that provided by Hazelbaker.

I also note that Hazelbaker testified that in his contacts with Conner that he told Conner that Bickford lived in Las Vegas, and that his living with his mother in Michigan and being treated by the Employer as a local resident was not acceptable. I do not credit this aspect of Hazelbaker's testimony, as I have concluded that if Hazelbaker made such a clear dispute of Bickford's residency to Conner that Conner would have recalled it. Yet, Conner testified he was not even certain that Bickford's residency was discussed with Hazelbaker and that if it was it was not the focus of the conversation. I have also not credited Hazelbaker's testimony that he told Conner that he thought at the rate the Employer was hiring that they would have hired all of the locals in 2 weeks, at which point Bickford could be brought back to work. This was not

corroborated by Conner, and there was no basis provided for Hazelbaker to have concluded that all of Local 38's available roster would have been hired in 2 weeks. In fact, as expressed in Conner's July 8 email to Bickford he stated that Local 38 members were still looking for work. Finally, the tone of the July 8 email where Conner vehemently attempted to dissuade Bickford from returning to the Employer undercuts Hazelbaker's claim that he told Conner that such a return would possibly be sanctioned by the Union in the not too distant future. In this regard, I have concluded Conner, a Local 38 member, who may have been dependent on Local 38 for his own future referrals was acting on what he perceived his instructions from Hazelbaker to be, and Conner in his contacts with Bickford in no way conveyed the impression in May that there was a possibility of reinstatement or that Conner would attempt to facilitate such.

D. Analysis

A union violates Section 8(b)(2) of the Act when it attempts to cause or causes an employer to fire or lay off employees for reasons other than their failure to pay dues and fees under a valid union-security clause, including attempts to have employers fire travelers because of their status as travelers. See, *Plumbers Local 392 (Oberle-Jorde Co.),* 273 NLRB 786, 793 (1984). In *Plumbers Local 392,* the union's business agent visited a construction site and told the employer's construction manager that 450 local members were out of work and asked the employer to lay off travelers and replace them with local members. The construction manager stated he could not afford to lay off anyone. During this time period, the union steward had conversations with the travelers working at the site and told them they should plan on making the next day their last, and that anyone who was asked to leave and refused to do so would be sanctioned by the hall, they would never work out of the local again, and the union would not be responsible for what happened if they showed up on the job. None of the six travelers appeared for work the following Monday, and after 3 days of unexcused absences they were terminated by the employer. The Board approved the judge's finding that the union violated Section 8(b)(1)(A) by the actions of the steward whose threats caused the travelers to leave their jobs. The Board found the union also violated Section 8(b)(2) of the Act by attempting to cause the employer to layoff the travelers. In finding the Section 8(b)(2) violation, the judge noted at 793, with Board approval that:

> There is no evidence that any threats were made or any inducements offered in order to get the Employer to lay them off or that the Employer had any intention of complying with the request.[FN7] Notwithstanding the fact that Jeffers made only a "bare request," which was not acceded to by the Employer, I find there was an unlawful "attempt to cause" the Employer to discriminate against the travelers in violation of Section 8(a)(3) because there was no legitimate basis for this request, which was premised solely on the Union's desire to employ its local members at the expense of the travelers. Consequently, the Respondent's action violated Section 8(b)(2) of the Act."[FN8]

Thus, for the finding of a Section 8(b)(2) violation it is not required that a union threaten or coerce an employer to cause it to discriminate against an employee; all that is required is that when a union attempts to cause, or causes such discrimination. See, *Local 334, Laborers International Union of North America (Kvaerner Songer, Inc.),* 335 NLRB 597, 600 (2001); and *Carpenters Local 1456 (Underpinning Constructors),* 306 NLRB 492 (1992), enfd. 993 F.2d 1533 (2nd Cir. 1993).

A union that operates a nonexclusive hiring hall, such as Local 38 here, will be found to violate Section 8(b)(1)(A) and (2) when it interferes with an individual's employment because that individual was not referred for employment by the union; or because of the individual's

membership status; or for union related reasons. *Kvaerner Songer, Inc.,* 343 NLRB 1343, 1346 (2004); *Carpenters Local 2369 (Tri-State Ohbayashi),* 287 NLRB 760, 762-763 (1987), enfd. 878 F.2d 1439 (9th Cir. 1989); and *R-M Framers, Inc.,* 207 NLRB 36 (1973). In *R-M Framers,* Id. at 44, the judge, with Board approval, found a causal link between statement from a union official and the unlawful discharge of an employee even though there was no direct request for such discharge. There the judge stated:

> This Board has consistently held, with judicial concurrence, that a labor organization need not make a specific demand upon some concerned employer to terminate a worker for illegal reasons before Section 8(b)(1)(A) and (2) violations may be found. See *Local Union No. 742, United Brotherhood of Carpenters and Joiners of America (J. L. Simmons Company, Inc.)*, 157 NLRB 451, 453-454, enfd. 377 F.2d 929 (C.A.D.C., 1967); *Local Union No. 592, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Brunswick Corporation)*, 135 NLRB 999, 1000-02; *Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, Local Union No. 193 (Southeastern Plate Glass Company)*, 129 NLRB 412, 413. Compare *Local Union No. 230, Sheetmetal Workers International Association, AFL-CIO (Twin City Roofing)*, 165 NLRB 151, 152-154, 154-155, 156, in this connection. I find these precedents germane; further, upon this record, I find their principle dispositive.

Along these lines, the Board has held that unlawful interference by a union in an employee's employment need not be shown by an express request, demand, or threat. It is sufficient if any pressure or inducement by the union is used to influence an employer in terms of an employee's employment relationship with that employer. See, *Stage Employees IASTE Local 665 (Columbia Picture)* 268 NLRB 570, 572 (1984), enfd. 751 F.2d 390 (9th Cir. 1984) (where statement that an individual who had let his dues lapse was not in good standing and that the employer should use one of four other named individuals was sufficient to violate the Act. See also, *Electrical Workers Local 441 (Otto K. Oleson Electronics),* 221 NLRB 214 (1975), enfd. 562 F.2d 55 (9th Cir. 1977); and *Northwestern Montana District Council of Carpenters (Glacier Park Co.),* 126 NLRB 889, 897 (1960).

Moreover, in order to establish a violation of the Act, direct evidence that a union requested an employer to discriminate is not necessary. A violation can be found on the part of a union if there is sufficient evidence to support a reasonable inference of a union request or a union employer understanding. See, *Avon Roofing,* 312 NLRB 499 (1993); and *Kellog Constructors,* 273 NLRB 1049, 1051 (1984), remanded on other grounds 806 F.2d 1435 (9th Cir. 1986). Thus, in *Groves-Granite,* 229 NLRB 56, 63-67 (1977), it was stated that while the evidence was heavily circumstantial, it warranted a finding that union official Peaslee and employer representative Wells had worked out a deal that employee Baublitz be transferred and that as a direct outgrowth of this, employer representative Vestal prevailed on Wells to discharge Baublitz, and thus the union violated Section 8(b)(1)(A) and (2) of the Act, and the employer discharged the employee in violation of Section 8(a)(1) and (3) in collaboration with the union. It was stated on the threshold issue of union causation that Baublitz had filed internal union charges against Peaslee just a week before the discharge. It was stated that although there was no explicit evidence that Peaslee's irritation over the filing of an internal union charge a week before the discharge translated in an attempt to affect Baublitz' job status, there was ample basis to infer that the discharge was precipitated by some kind of understanding between Peaslee and Wells on the general subject, their denials notwithstanding.[5]

[5] The Board will find a derivative Section 8(b)(1)(A) allegation when a Section 8(b)(2) violation is established. See, *Postal Workers,* 350 NLRB 219, 222 (2007); *Jacoby v. NLRB*, 233

In *NLRB v Local 776, IATSE (Film Editors),* 303 F.2d 513, 516 (9th Cir. 1962), cert. denied 371 U.S. 826 (1962), concerning an 8(b)(1)(A) and (2) allegation, the court stated:

> The trial examiner acknowledged in his Intermediate Report that there was no direct proof of respondent (union's) complicity in the dismissal; however, he was of the opinion that the record manifested an 'implicit' demand by respondent (union) upon Cascade to discharge Carlson. Respondent readily recognizes the power of the Board to draw reasonable inferences and make other pertinent deductions from the evidence (*Radio Officers' Union of, etc., v. N.L.R.B.,* 347 U.S. 17, 48-52, 74 S.Ct. 323 (1954)), but argues with much vigor that here this foundation is completely absent so that the finding is not 'supported by substantial evidence on the record considered as a whole * * *' within the meaning of sections 10(e) and (f) of the Act. Id. 516-517.

In sustaining the Board's finding of a violation against the union the court stated "the Board's factual conclusion is neither unreasonable nor too tenuous to stand. In *NLRB v Local 776, IATSE (Film Editors),* supra, Cascade, Carlson's employer, questioned the respondent union as to whether Carlson's job was covered by the employer's collective-bargaining agreement with the union. Union official Todd discussed the matter with one of Cascade's officials, who a few days later notified employer official Loftus that the job came under the union's jurisdiction. Carlson testified Loftus told him that the union was on his back, and he was forced to let Carlson go by the end of the week. The court stated Loftus' statement although admissible evidence concerning the employer pertaining to the 8(a)(3) allegation was hearsay as to the respondent union. However, the court concluded additional statements concerning union agent Todd following the discharge provided a sufficient basis to sustain the unfair labor practice finding. In affirming the 8(b)(1)(A) and 8(b)(2) finding the court noted, that the sequence of events including that Carlson's job was taken by a member of the respondent union, and Todd's statement's recognizing a moral obligation to find Carlson work are persuasive to the finding that the respondent union played a prominent role in Carlson's termination from Cascade, as well as the finding that an employer is not in the habit of dismissing competent employees to replace them with another. The Board has relied on statements by supervisors in the 8(b)(2) context, in part, to establish that a union has violated the Act. See, *M. W. Kellogg Constructors*, 273 NLRB 1049, 1051-1052 (1984).

Unions can maintain and enforce internal regulations as long as the enforcement of those internal regulations do not affect a member's employment status. See, *Scofield v. NLRB*, 394 U.S. 423, 428-429 (1969). See, *Bricklayers Local No. 1 (Mason Contractors Assn.),* 308 NLRB 350 (1992), where a union was found to violate the Act by its refusal to issue a work permit to a nonmember which was required as condition of employment in order to give employment preference to existing members. See also, *Laborer's, Local No. 721,* 246 NLRB 691, 693 (1979); and *Pittsburgh Press, Co.,* 241 NLRB 666 (1979).

F.3d 611, 618 (D.C. Cir. 2000); and *NLRB v. Iron Workers Union, Local 433*, 767 F.2d 1438, 1440 (9th Cir. 1985). In particular, in *H.C. Macaulay Foundry Co.,* 223 NLRB 815, 821, fn. 8, (1976), the Board approved the judge's finding of a Section 8(b)(1)(A) violation where the complaint only alleged a violation of Section 8(b)(2) by the union. There the judge stated, "The complaint alleges a violation of Sec. 8(b)(2) of the Act. It does not allege a violation of Sec. 8(b)(1)(A) which is derivative of the 8(b)(2) violation. However, as the underlying facts pertaining to a violation of Sec. 8(b)(1)(A) are identical to those upon which the 8(b)(2) violation is premised and the legal theory for both violations is identical, I find that Respondent Union by its misconduct has also violated Sec. 8(b)(1)(A) of the Act."

In the instant case, the credited testimony reveals the following: Bickford had been a member of Local 38 from 2001 until December 5, 2007, when he was expelled for the non-payment of dues. The amount owed was $94, with a $10 late fee, and a $50 reinstatement fee totaling $154. Bickford claimed to have repaid the amount owing to Local 38 in June 2010, although he did not retain a receipt for the payment. Bickford credibly testified that he always signed a dues check off form while working for a contract employer in Local 38's jurisdiction, and I have credited this testimony as Bickford signed such a form with the Employer in this case, although Michigan had become a right to work state. Since Bickford always signed dues check off for Local 38 when he was employed with a contract employer, I have concluded that, in order to maintain his membership, Bickford had a dues obligation to Local 38 even for times in which he was not employed. In this regard, Bickford testified that when you are a member of the union you are required to pay quarterly stamps to the local union, and the stamp means your dues are current. Thus, Local 38 had a financial interest in seeing that individuals who are full members achieved employment over those who were not.

On January 1, 2014, Bickford became a member of Las Vegas Local 720 of IATSE, and he testified he maintained his membership in good standing with that local. Bickford learned of the Sage & Milo production from a contact in Las Vegas. Bickford made a call from Nevada in February 2014 to Best Boy Jones for Sage & Milo wherein Bickford inquired about a job on the production. Jones told Bickford that he would have to have a Michigan driver's license and a Michigan address to be hired. Bickford told Jones that he had both. Bickford spoke to Sage & Milo Fixture Foreman Conner about a job on the production during the first week in April. He and Conner had been long time friends and they had worked together in the past. Conner was a long time member of Local 38.

As per Bickford's credited testimony, Conner hired Bickford who began his employment with Sage & Milo in the fixture department on April 28. Conner, during the course of their pre-hire discussions approved a vacation for Bickford from May 3 to May 9. Bickford testified that while having his pre-employment discussions with Conner that Conner was aware that Bickford was in Nevada. During these pre-hire discussions with Conner, Bickford told Conner that Bickford was good with the union, to which Bickford meant he was a member in good standing with Las Vegas Local 720. Bickford told Conner that Bickford would come to Michigan and live with Bickford's mother while working on the film. He testified that Conner knew Bickford was renting a house in Nevada.[6] Bickford signed employment related documents for the Employer on April 28 wherein he listed a Michigan address, and for which he also produced a current Michigan state driver's license. When Bickford started on April 28, there were two other members of Conner's crew, who Conner testified were members of Local 38.

Conner testified that on Friday morning, May 2, Conner received a voice mail from Local 38 Business Representative Hazelbaker for Conner to call Hazelbaker as soon as possible.[7] Conner testified he called Hazelbaker that morning, and during the call Hazelbaker wanted to know why Conner hired off roster. Conner told Hazelbaker that when Bickford had told Conner that Bickford was good with the union, Conner thought that Bickford meant Local 38. Conner testified Hazelbaker told Conner that Hazelbaker thought Bickford owed Local 38 money

[6] Conner confirmed that Bickford was willing to come to Michigan and live with his mother for the duration of his employment, that he was told Bickford had a Michigan driver's license, and that Bickford told Conner that Bickford was good with the Union. Conner testified that he had pre-approved a vacation for Bickford before he started.

[7] Hazelbaker testified he had received a report that Bickford was working on the job.

and Hazelbaker "seemed pretty upset that I had hired this guy." Hazelbaker "said that he also had people that were still calling looking for work on the show and that, you know, that I should've checked to make sure that Ralph was on the roster, which I had not done." When asked what roster Hazelbaker was talking about Conner testified, "It's a member roster of people that are available or that have current status with Local 38 that are members and would be available to work."[8] Conner testified Hazelbaker said he wanted to check to see how much Bickford owed. Conner testified "so I think we actually kind of paused our conversation and then spoke again after he found out, you know, what that amount was or whether he did indeed owe money." Conner testified Hazelbaker said, "do we need to have a Teamster have an accident?" Conner testified "it was said in a joking way, but it's something that stuck in my head as to why I acted the way I did as result." Conner testified he and Hazelbaker discussed that, when Bickford left Michigan and Local 38 to go to Las Vegas, Bickford left on bad terms.

Conner testified he had two calls with Hazelbaker that morning. Conner testified that, during one of the calls, he was almost certain Hazelbaker asked what Bickford's intentions were and Conner informed Hazelbaker that Bickford had a Michigan driver's license. Conner testified Bickford's residence must have been discussed with Hazelbaker, but he did not recall whether the discussion took place in the first or second call. Conner did not testify to a certainty that Bickford's residence was discussed, rather he testified "I think it was." Conner testified Bickford's residency was not the focus of the conversation.

Conner testified that, after his first conversation with Hazelbaker on May 2, Conner spoke to Bickford. Conner testified he confronted Bickford on the fact that Bickford had told Conner that Bickford was good with the union, and now Local 38 was telling Conner that Bickford was not current with his membership, that he owed money, and that this had put Conner in a bad situation. Conner testified this was because Conner hired Bickford under the assumption that Bickford's Local 38 membership was good even though Bickford was coming in from out of town. Conner testified, "I didn't feel he was being dishonest. I just, you know, suddenly we had this, you know, I had misunderstood what he meant --and would have treated the situation different." Conner testified Bickford said the last thing he wanted to do was to get Conner in trouble. Bickford said if it was going to get Conner in trouble Bickford would walk away from the job. Bickford said he would call Hazelbaker.

Similarly, Bickford testified that on May 2, around 10 to 10:30 a.m., Conner called Bickford and said Conner had just gotten off the phone with Hazelbaker. He testified Conner said Hazelbaker had chewed Conner out because Conner hired Bickford in the position of fixtures, and Conner said to Bickford that, "I thought that you said that you were okay with the union?" Bickford testified he responded that he was okay with the union. However, Conner replied that Hazelbaker said Bickford was not a member. Bickford said he never said he was a member of Local 38, that he was a member of Local 720. Bickford asked Conner if he wanted Bickford to call Hazelbaker, and Conner said he thought Bickford should call him.

Bickford testified that, on May 2, following his conversation with Conner, Bickford called Hazelbaker at around 10:30 a.m. Bickford credibly testified that: Hazelbaker told him that if Bickford was coming into a home local Bickford should have called Hazelbaker first to get

[8] In fact, Hazelbaker testified he had received calls from Local 38 members seeking work on the film, which was a major production, and which both Conner and Hazelbaker described as a very good job in terms of duration for those who received it. Thus, pursuant to calls from Local 38 members, Hazelbaker had a strong motive to ensure that Local 38 members received as much work as possible on this film.

permission to work on the movie. Hazelbaker said he had other members who were not working and they should be hired first. Bickford asked Hazelbaker what Bickford could do to make it right. Hazelbaker said Bickford owed back dues and Bickford replied he paid those dues. Hazelbaker said he would have Hazelbaker's secretary Michele send a letter to the International to see whether Bickford owed any back dues to Local 38. Bickford said that was fine but asked what they were going to do in the meantime. Hazelbaker said they should figure out what was going to happen with the dues. Hazelbaker said they will wait for a letter from the International to which Bickford said alright. Bickford testified as far as he knew that was all that was going to happen that day. He testified at that point the issue was back dues. Bickford later testified that, in his first conversation with Hazelbaker, Hazelbaker asked if Bickford had a driver's license and Hazelbaker said one of the requirements for this is a residence and a driver's license in Michigan, and Bickford said he had both. Bickford testified Hazelbaker said he had not heard from Bickford in years and he did not know Bickford was still in the area. Bickford said he did not get work from Local 38 and Bickford did not know he had to keep Local 38 informed as to where he lived. Bickford stated in his pre-hearing affidavit that, "Cal also said he didn't even think I was in town anymore, and one of the issues was that I had to be a resident of Michigan."

Conner testified that Bickford did call Hazelbaker, and after placing the call Bickford acted like all he needed to do was pay the money owed and everything would be good. However, Conner testified that, based on his discussions with Hazelbaker, Conner thought things were not good that what Conner had done was wrong and Conner needed to fix the situation. When asked what he thought he had done wrong, Conner testified pertaining to Bickford , "Hiring him in front of 38 members." Conner testified he spoke to Hazelbaker a second time on May 2. Conner testified the conversation was similar to the first call in that he was told he should have checked the roster, that he should have verified whether or not Bickford was a member. He testified "we basically went through a lot of the same things." Conner testified that on May 2, he indicated to Bickford that things did not seem right. Conner testified Bickford said he would call Hazelbaker a second time.

Bickford testified that, "I guess after lunch Mike Conner had had another conversation with Cal, and I guess Cal read him the riot act about having me –" Bickford testified credibly testified that: Conner said to him there was an issue about Bickford being employed because Bickford was not a member and members of Local 38 were not working. Conner said he spoke to Hazelbaker about it, and Conner was worried about his reputation with Local 38. Bickford told Conner that Bickford would call Hazelbaker and see what he could work out. Bickford made two attempts to call Hazelbaker and he left messages. Hazelbaker called Bickford back around 4:30 p.m. on May 2. During the conversation, Bickford told Hazelbaker that, if Bickford needed to get a dual card, Bickford would be happy to apply for membership with Local 38. Hazelbaker said they would see what happens with Bickford's back dues first concerning the letter Local 38 was sending to the International. Bickford told Hazelbaker that Bickford was worried about Conner's reputation and Bickford asked if Conner was ok. Hazelbaker said Conner was ok, and he had already said what he needed to say to Conner. Bickford said there was never a problem when he came in and worked on Real Steel and there was never a problem with any of the movies Bickford worked on before Hazelbaker was the business representative. Bickford said he did not know why when he came into work before when he was not a member of any union there was no problem, now that he was a member of the Las Vegas local he did not understand what the problem was. Bickford said he thought this was getting way out of proportion.

Conner testified Bickford came up to Conner at the end of the day on May 2, while he was in a meeting, and Bickford gave Conner "a thumbs up like everything was okay, and just said, we're good." However, Conner testified he felt uneasy and on Monday, May 5, Conner went to see Hazelbaker at the union office. Conner testified, "We talked a little bit more in detail of what some of the formalities would be as far as somebody coming in from out of town, things that I should have done, calling to check the roster, but also calling to declare that somebody is coming from out of town to work, which is something either I should have done or something Ralph should have done, or even possibly had his BA call Cal." Conner testified this was what Hazelbaker was telling him. Conner testified they discussed there were other people trying to get on the show, and that Hazelbaker routinely receives calls from people looking for work. Conner testified they spoke about whether Bickford had any special qualifications. Conner said Bickford did not have special qualifications where Conner could not have used someone else to do the work. Conner testified, "So a lot of the questions I had to agree to and say, yes, you know, I should have or I could have. You know, these are all things that were making me feel like I should have done something differently." Conner testified that Hazelbaker "said that when Ralph pays his dues up, that doesn't mean he has 38 status or that he's once again a 38 member, and he said that also when Ralph came back after he paid his back owed money that he could go on an available status, but it would be if and when we needed to use somebody from out of town; he shouldn't expect to be coming right back to work that following Monday after his vacation." Conner testified he thought what Hazelbaker was saying was, "that Ralph does not necessarily have work back here until we either exhaust the people that are looking for work or that there's some other opportunity for him." Conner testified that exhaust what people was not said, and that the only thing Hazelbaker said "that he still had people that were looking to work on that show."

However, Conner later testified that when he and Hazelbaker met face-to-face, Hazelbaker told him that Bickford simply paying his back dues was not going to make everything right for Bickford to start working again on Monday when he returned from his vacation. Conner testified that from his conversation with Hazelbaker Conner's understanding of the problem was that Bickford "was not a roster member." Conner testified his understanding from his conversation with Hazelbaker was the problem was Bickford was not a member of Local 38. Conner testified he would not have let Bickford go had he not been confronted about hiring him by Hazelbaker. Conner testified he may never have known Bickford was not a member of Local 38. Conner testified he was thinking of the roster as Local 38 members. Conner testified he did not know if they made a distinction between who was on the roster and who were local 38 members. He testified, "I am thinking of the roster as 38 members."

On May 6, Conner sent Bickford a text message that reads as follows:

> We have had a busy day. Ralph my gut is wrenching. Yesterday I went down to talk to Cal face to face. I wanted to face not handling the situation correctly. Cal's version of 'we're good' is you settle up, then we can use you if and when we need to bring people in from out of town. Not starting back in with us on Monday. He still has local people calling and asking if they can get on the show. All these points he was making I had to agree with. I have not answered your calls because I have been trying to face telling you that I have to make this right. That's what Cal expects. This has really been bringing me down. I don't want to hurt my friend, but we didn't handle it the right way. I'm sorry.

Bickford testified after he received the text message, he tried to call Conner and when he eventually reached him on May 6 or 7, Conner "basically told me that he had to let me go and

that I was not able to – I was not able to come back, you know, on Monday like I had planned." Bickford testified that Conner hired and fired him. Bickford testified that no one from the Employer commented on his job performance. Bickford testified that during the conversation Conner stated Hazelbaker told him he had to bring in the local guys first, and if there was anything left over after everybody in the Union was working, then Bickford might be able to get in on the movie. Upon clarification, Bickford testified that, during the call, Conner used the term "local guys," that Conner did not use the word residents, and he did not use the word Union. Bickford testified Conner did not talk to him about residency.

Similarly, Conner testified that, after he sent Bickford the May 6, text message he had a phone conversation with Bickford. Conner testified that Bickford talked about maybe leaving the job for a while and coming back possibly in another department. Conner said that was up to him because Conner could not force him on another department. Conner testified that Bickford did not want to leave the job stating, "He was looking for other ways to solve it, …." Conner testified he was asking Bickford to leave the position, and in fact, Conner had previously informed a co-worker that he was going to terminate Bickford. Conner testified that, "We talked about the fact that he had said that he would step away if it was going to get me in trouble. I felt like I was in trouble. So we basically just hashed through all these things, and then Ralph came to the realization that I was asking him to leave, and he accepted that."

On June 18, Conner sent an email to a Board agent confirming and adding to a memo of Conner's prior conversation about what had transpired with that Board agent. In the email, Conner stated, in part:

> Near the completion of the 1st week you got your first phone call from the Union, Cal Hazelbaker, the Local 38 BA. Cal asked me why I was hiring off-roster. He said there are still people in town that are looking for work. I was also told that Bickford owed money to Local 38. I told Cal that I had no idea that Bickford was not current with his Local 38 membership and up to date. Cal did not tell me to get rid of Bickford he just said it was a problem that I hired off-roster when there were local members looking for work, and that Bickford was not in good standing with Local 38. When an employee is coming to work on another card he is supposed to contact the Local Union as a formality to gain permission, in some Locals the outside member can talk to his BA and he calls the union where the work is being sought, and the 2 BAs talk to each other to ok the member going to another local.
>
> I was told that when Bickford left Local 38 to move to Las Vegas, he did not leave on good terms and with no apparent plans to return. I was also told that I should have checked the roster to verify Ralph was indeed a Local 33 member and that I should have made a call to the hall myself to let them know who I am hiring.
>
> After I talked to Cal, I talked to Bickford. We talked about the misunderstanding. I told him all the things that Cal had told me. I told him we had both done things improperly. I told him that I needed to do the right thing here. I told him it was not right for him to work ahead of other members if he was not in good standing with Local 38. Bickford told me the last thing he wanted was for me to get in trouble over this. He said he would call Cal and see if he could fix things. After talking to Cal, Bickford told me that he needed to pay the money that was owed and then he would be able to work. In an additional conversation with Cal, I still felt like the situation needed to be corrected. Bickford's conversations with Cal seem to go ok but I still felt very much in trouble and that I had done things improperly.
>
> After Bickford left to go on his vacation, I went down to talk to Cal face to face. We revisited all the points of the hiring procedures and I further admitted that I had done

things incorrectly. I told him that Bickford is under the impression that if he pays his money owed, he would be good to continue working. Cal clarified that Bickford, upon paying money owed would be able to work, if and when we needed extra guys beyond our local roster of qualified members. Cal told me if Ralph had special talents that I could not find locally that might be different but I admitted that I could try members that I had not worked with first.

I contacted Bickford to let that it was not a simple pay and return to work. I told him that I needed to correct the situation, that I didn't want this kind of mistake to follow me. We talked for awhile and Bickford realized I didn't want to but I was letting him go. We talked about him waiting a few weeks to see if things got busier but I told him I thought it would be better if he checked other departments for their needs and that my next call if I needed to find labor would be to our office.

He agreed, he said he could make a big deal about it but he would not do that because I was involved. But then a few weeks later I found out he filed this charge against the Union.

Since Bickford's departure, the local member that was filling in for him has continued as part of my base crew and any additional hires have been available members needing the work.

On July 8, Conner emailed Bickford where Conner stated, in part:

Ralph,

This is absolutely the worst work situation I have ever been in.

Whatever solution comes to the situation, I do not know anyone involved that I will not either be in trouble with or have caused trouble for. That list includes You, Local 38, The Rigging Electric Dept., The Set Decorating Dept., Local 38 legal representatives, National Labor Relations, Crown City Pictures, and Warner Bros. Labor Relations.

* * *

I then talked to Rigging Electric about the current situation and what Warner Bros. said. I have been working with the same three guys, I like all of them, and they all seem pretty happy working for me and that is what is allotted to me. I would not think it right to displace any of them. Also, thinking back, none of them had the expectation to work for me. I have also had two members contact me recently about being available. That sort of takes me all the way back to the beginning. Shouldn't they be given the next opportunity. Rigging Electric said they can find you a spot but would be unsure of the duration, I admitted to them that I would not feel comfortable working with you. This whole thing is not sitting well with me, my self image, my choices, and our friendship. Coming back, we would both be surrounded by a lot of WTFs, especially after I've already had to try to explain why you aren't here anymore.

Rigging Electric, suggested I contact you...

It is clear from Conner and Bickford's testimony and Conner's writings that he terminated Bickford because Bickford was not a member of Local 38. Thus, after Hazelbaker first spoke with Conner on May 2, Conner testified he informed Bickford that, although Bickford had informed Conner that Bickford was good with the union, Local 38 was telling Conner that Bickford was not current with his membership, that he owed money, and this had put Conner in a bad situation. Similarly, Bickford testified Conner called Bickford and said Conner had just gotten off the phone with Hazelbaker. He testified Conner said Hazelbaker had chewed Conner out because Conner hired Bickford in the position of fixtures, and Conner said to Bickford that, "I thought that you said that you were okay with the union?" Bickford testified Conner said that Hazelbaker said Bickford was not a member. Bickford said he never said he was a member of Local 38, that he was a member of Local 720. Bickford testified Conner was

worried about his reputation with Local 38; and Bickford told Conner that Bickford would call Hazelbaker and see what Bickford could work out. Bickford testified when he spoke to Hazelbaker, Bickford expressed a concern as to whether Conner was ok with Local 38. I have concluded Bickford was echoing this concern to Hazelbaker as it had been expressed to him by Conner.

Thus, after meeting with Hazelbaker faced to face on May 5, Conner texted Bickford, stating, "Ralph my gut is wrenching. Yesterday I went down to talk to Cal face to face. I wanted to face not handling the situation correctly. Cal's version of 'we're good' is you settle up, then we can use you if and when we need to bring people in from out of town. Not starting back in with us on Monday. He still has local people calling and asking if they can get on the show." Conner testified that following the text message he had a phone call with Bickford, in which, "We talked about the fact that he had said that he would step away if it was going to get me in trouble. I felt like I was in trouble."

Conner testified that he had a second call with Hazelbaker on May 2, and Conner testified that based on his discussions with Hazelbaker that Conner thought things were not good that what Conner had done was wrong and that Conner needed to fix the situation. When asked what he thought he had done wrong, Conner testified pertaining to Bickford , "Hiring him in front of 38 members." Conner testified that his second call with Hazelbaker was similar to the first in that Conner was told he should have checked the roster and verified whether or not Bickford was a member. Conner was even more forthcoming in his June 18, email to the Board agent, wherein he stated:

> Near the completion of the 1st week you got your first phone call from the Union, Cal Hazelbaker, the Local 38 BA. Cal asked me why I was hiring off-roster. He said there are still people in town that are looking for work. I was also told that Bickford owed money to Local 38. I told Cal that I had no idea that Bickford was not current with his Local 38 membership and up to date. Cal did not tell me to get rid of Bickford he just said it was a problem that I hired off-roster when there were local members looking for work, and that Bickford was not in good standing with Local 38. When an employee is coming to work on another card he is supposed to contact the Local Union as a formality to gain permission, in some Locals the outside member can talk to his BA and he calls the union where the work is being sought, and the 2 BAs talk to each other to ok the member going to another local.
>
> I was told that when Bickford left Local 38 to move to Las Vegas, he did not leave on good terms and with no apparent plans to return. I was also told that I should have checked the roster to verify Ralph was indeed a Local 33 member and that I should have made a call to the hall myself to let them know who I am hiring.
>
> After I talked to Cal, I talked to Bickford. We talked about the misunderstanding. I told him all the things that Cal had told me. I told him we had both done things improperly. I told him that I needed to do the right thing here. I told him it was not right for him to work ahead of other members if he was not in good standing with Local 38.

To this end, Conner also testified that Hazelbaker's Teamster remark during their initial call while "said in a joking way," "stuck in my head as to why I acted the way I did as result."

Thus, I have concluded that Hazelbaker's intervention intimidated and coerced Conner into terminating Bickford. In this regard, Conner was a Local 38 member, who was on the Union's referral list, and as such was dependent on Local 38 for future employment. I also find that, while Respondent's counsel led Conner into stating that preferential employment of

Local 38 members was a result of his own personal beliefs, that this statement was not worthy of belief. In this regard, Conner knew that Bickford was not a Local 38 member on Friday, May 2, but he did not seek to terminate Bickford until he met with Hazelbaker on May 5, and was given a lesson in the procedures he had to follow, per Hazelbaker's perspective in terms of hiring, as well as being told by Hazelbaker that Bickford was not to return to work the following Monday. Conner testified that Hazelbaker "said that when Ralph pays his dues up, that doesn't mean he has 38 status or that he's once again a 38 member, and he said that also when Ralph came back after he paid his back owed money that he could go on an available status, but it would be if and when we needed to use somebody from out of town; he shouldn't expect to be coming right back to work that following Monday after his vacation."

I therefore find that it was specifically at Hazelbaker's behest that Conner removed Bickford from the job, and that Conner did so because Bickford was not a member of Local 38, but a traveler from Local 720. I find Bickford's removal from the job was because of his union membership status and would be found to be violative of Section 8(a)(3) of the Act, but for the fact that the Employer reached a settlement agreement with the Region over the matter prior to the hearing.

I also find the Union violated Section 8(b)(2) and Section 8(b)(1)(A) of the Act by Hazelbaker's actions in having Bickford pulled off the job.[9] In this regard, Conner credibly testified Hazelbaker's call to Conner was about Bickford's membership status with Local 38, as opposed to Bickford's residency, stating he was not even sure Bickford's residency was discussed. Respondent tried to cast Hazelbaker's contact with Conner by contending that Hazelbaker was merely seeking to have people hired who were Michigan residents pursuant to a state statute. However, I do not find this position persuasive. I find Conner's June 18 email to the Board agent most accurately depicts his conversations with Hazelbaker. Conner testified he edited the email on his own. Moreover, Conner testified it was his understanding following two phone calls and a face to face meeting with Hazelbaker that the problem with Bickford's employment was he was not a Local 38 member. Conner, who impressed me as a bright individual, did not come away with that conclusion based on a misunderstanding of what Hazelbaker was trying to convey to him. Rather, I have concluded Conner's conclusion was a result of what Hazelbaker said and meant to say. I am also not persuaded by the Union's tendering its then current referral list with Hazelbaker's testimony that some on the list were not members of Local 38. In this regard, the list contained a large amount of names, and there was no identification of which individuals were supposedly not Local 38 members, or any identification as to whether the non-members amounted to a significant number on the list. More compelling was the fact, that Bickford was replaced by a Local 38 member, and Conner subsequently wrote Bickford stating that Local 38 members should be given preference in hiring on the job. I am convinced that Conner obtained this principle from Hazelbaker by direct statement as opposed to any misunderstanding. While Conner stated in his June 18 email that no one asked him to terminate Bickford, the case law states a direct request does not need to be made for a violation to be found. Moreover, I find that Hazelbaker's telling Conner that Bickford could not return to the job following his vacation to constitute a direct request.

[9] While the complaint did not allege Respondent's conduct violated Section 8(b)(1)(A) of the Act, I find Section 8(b)(1)(A) in the context of this case is a derivative violation of Section 8(b(2) of the Act, that the matter has been fully litigated, and therefore I find a Section 8(b)(1)(A) violation as requested by counsel for the General Counsel in her post-hearing brief. See, *Postal Workers,* 350 NLRB 219, 222 (2007); *Jacoby v. NLRB*, 233 F.3d 611, 618 (D.C. Cir. 2000); *NLRB v. Iron Workers Union, Local 433*, 767 F.2d 1438, 1440 (9th Cir. 1985); and *H.C. Macaulay Foundry Co.,* 223 NLRB 815, 821, fn. 8 (1976).

I have also considered that in a position statement to the Region, dated June 23, 2014, signed by Respondent's counsel and copied to Hazelbaker, Respondent argued Bickford was terminated because "Movie production employers would find Bickford's vacation unacceptable on a fast-moving and intense job." It was stated, "At some point, Hazelbaker casually remarked to Conner that Bickford had outstanding dues obligations. Hazelbaker did not ask Conner to engage in any improper or illegal activity." It was stated that, "When Bickford went on vacation, Conner hired someone else. Conner did not fire Bickford because of Cal's remark. Conner made an employer-based decision to fill a position that Bickford left." Despite Respondent's position at trial that Hazelbaker in his contacts with Conner was attempting to enforce a preference for the hiring of local residents, such argument is noticeably absent from the position statement. Moreover, what was downplayed as a "casual remark" about dues in the position statement was actually the subject of two phone calls and a face to face meeting between Conner and Hazelbaker, the latter sought by Conner who was intimidated by Hazelbaker's prior contacts. Finally, Bickford was not discharged by Conner by for taking a pre-approved vacation. Conner, as I have found discharged Bickford because he was not a member of Local 38, after Hazelbaker's intervention caused him to do so. I find Respondent's claim at the hearing that Hazelbaker intervened because Bickford was not a local resident to constitute a belated shifting defense further revealing the pretextual nature of Respondent's position.[10]

E. The Compliance Specification

In *St. George Warehouse,* 353 NLRB 497, 501 (2008),[11] the following principles were set forth:

> To be entitled to backpay, a discriminatee must make reasonable efforts to secure interim employment. The discriminatee must put forth an honest, good-faith effort to find interim work; the law does not require that the search be successful. Doubts, uncertainties, or ambiguities are resolved against the wrongdoing respondent. *Midwestern Personnel Services,* 346 NLRB 624, 625 (2006) (citations omitted). Even though a discriminatee must attempt to mitigate her loss of income, the discriminatee is held only to a reasonable rather than to the highest standard of diligence. *Minette Mills, Inc.*, 316 NLRB 1009, 1010 (1995).
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Similarly, in *United States Can Co.,* 328 NLRB 334, 337 (1999), enfd. 254 F.3d 626 (7th Cir. 2001), it was stated that:

[10] I find Respondent's reference to an internal requirement that Bickford should have sought Hazelbaker's approval before seeking work at a traveler, and Hazelbaker informing Conner of such was further evidence of Hazelbaker's attempt to unlawfully interfere with Bickford's employment because of his status as a traveler and lack of membership in Local 38. See, *Scofield v. NLRB*, 394 U.S. 423, 428-429 (1969); *Bricklayers Local No. 1 (Mason Contractors Assn.),* 308 NLRB 350 (1992) (finding a violation of the Act by a union's preventing employment by refusing to issue a traveler a work permit); *Laborer's, Local No. 721,* 246 NLRB 691, 693 (1979); and *Pittsburgh Press, Co.,* 241 NLRB 666 (1979). I also note that, while Hazelbaker testified there was such a rule in the IATSE's international constitution, the written rule was not introduced into evidence.

[11] The Board's was reversed by the court due to a lack of a quorum at the Board, but when a quorum was achieved at the Board it approved its decision which was enforced. See, *St. George Warehouse,* 355 NLRB 474 (2010), enfd 645 F.3d 666 (3d Cir. 2011).

> It should be noted, however, that a backpay claimant is not held to the highest standard of diligence in seeking interim employment, but is only required to have made reasonable exertions. Thus, an employer does not satisfy its burden showing that no mitigation took place because the claimant was unsuccessful in obtaining interim employment, by showing an absence of a job application by the claimant during a particular quarter or quarters of a backpay period, or by showing the claimant failed to follow certain practices in his job search, e.g., reading and responding to job advertisements in newspapers. *S.E. Nichols of Ohio,* 258 NLRB 1, 11 (1984). Finally, any uncertainties or ambiguities must be resolved against the wrongdoer whose conduct made such doubts possible. *Teamsters Local 469 (Coastal Tank Lines),* 323 NLRB No. 23 (1997).

In *Kawasaki Motors,* 282 NLRB 159, 160 (1986), enfd. 850 F.2d 524 (9th Cir. 1988), the judge, with Board approval, took into account the stigma of an employee's discriminatory discharge from the respondent employer in evaluating the bonafides of his job search. In *Amshu Associates, Inc.*, 234 NLRB 791, 794 (1978), it was held that a discriminatee made reasonably diligent search to secure work including reading want ads and responding by telephone, consulting superintendents, friends, relatives, and the local union, registering with state unemployment office, and making other inquiries. The Board has held that, in seeking interim employment, a discriminatee need only follow his regular method for obtaining work. See *Tualatin Electric, Inc.*, 331 NLRB 36 (2000), enfd. 253 F.3d 714 (D.C. Cir. 2001) (discriminatees satisfied their obligation to mitigate when they followed their normal pattern of seeking employment through the union's hiring hall). Long periods of unemployment or underemployment do not necessarily equate to a showing of lack of reasonable diligence. *McKenzie Engineering*, 336 NLRB 336, 344 (2001), enfd. 373 F.3d 888 (8th Cir. 2004).

The General Counsel alleges in her brief the backpay period here is May 12 to September 22, 2014, that is 5 days after the date Respondent sent a written notification to the Employer stating it had no objection to Bickford's reinstatement.[12] In *Miscellaneous Drivers and Helpers Local 610,* 236 NLRB 1048, 1048 fn. 1 (1978), enfd. 594 F.2d 1218 (8th Cir. 1979), the Board stated in the 8(b)(2) context that a respondent union sending a letter to the employer and the discriminatee informing them the union has no objection to the employer's employment of the discriminate is a prerequisite to end the union's backpay liability. There the Board stated:

> It is well-established Board law that for a union to effectively terminate its backpay liability prior to a Board finding of an 8(b)(1)(A) or 8(b)(2) violation, the union's *written* notification must be sent to both the employer and the employee. See *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 633 (Chicago Bridge and Iron Co.)*, 173 NLRB 1333 (1968); *Westwood Plumbers*, 131 NLRB 562 (1961).

Here, in July 2014, Bickford received a phone call from Carroll, an attorney with Warner Brothers, the Employer's parent company, who told Bickford he could be reinstated as part of a settlement agreement to the unfair labor practice charge filed against the Employer. Bickford testified he told Carroll that he did not want to take reinstatement because the Union had not signed off on it. Bickford testified when Carroll offered him reinstatement Bickford told Carroll he did not feel comfortable and he did not think he was going to come back. Bickford testified, "I

[12] The parties stipulated that May 12 was the date backpay, if any, should begin since that is the date Bickford would have resumed work had he returned to the Employer following his vacation.

says, I haven't been – I don't want to come back with – first of all, I don't have no guarantee how long I would be there, and I says, and the Union hasn't said that they would let me come back. I says, so I'm not going to do the expense to come back out to Detroit from Las Vegas, where I was currently at, with no guarantee that I would even be working." Bickford testified that through a series of phone calls with Carroll he negotiated a monetary settlement with the Employer, which included 3 weeks backpay, working 12 hours per day, plus benefits for that period of time. On July 25, Bickford signed a non-Board settlement with Crown City, which provided in part, in exchange for Bickford withdrawing his unfair labor practice charge against Crown City that Crown City would pay to Bickford the equivalent of 3 weeks back pay calculated on a 12 hour day for a total of $6,346.20 with corresponding benefits paid to the IATSE national health plan in the amount of $1,110.00 and the Local 38 Pension Fund in the amount of $555.00. Bickford testified he was offered reinstatement by the Employer in July as part of the settlement agreement. He testified he did not accept the position. Bickford testified that in September he received a letter from Local 38, which had been forwarded by the Region stating that the Union did not have an objection to his returning to work.

Given the fact that the Union had not notified the Employer or Bickford in July that it had no objection to his reinstatement, I find that Bickford's backpay claim should not be terminated by the Employer's July reinstatement offer in particular considering Bickford's circumstances at the time. In this regard, on July 8, Conner, a member of Local 38, who had discharged Bickford had sent Bickford an email containing the following remarks:

> I have been working with the same three guys, I like all of them, and they all seem pretty happy working for me and that is what is allotted to me. I would not think it right to displace any of them. Also, thinking back, none of them had the expectation to work for me. I have also had two members contact me recently about being available. That sort of takes me all the way back to the beginning. Shouldn't they be given the next opportunity. Rigging Electric said they can find you a spot but would be unsure of the duration, I admitted to them that I would not feel comfortable working with you. This whole thing is not sitting well with me, my self image, my choices, and our friendship. Coming back, we would both be surrounded by a lot of WTFs, especially after I've already had to try to explain why you aren't here anymore.

I find that Conner's attitude to Bickford's reinstatement, and his remarks were caused by Hazelbaker's conduct. Thus, the Employer's offer of reinstatement was premised on Bickford returning to a hostile work environment with a job of uncertain duration. That attitude and Conner's statement were a direct result of the unfair labor practices committed by Hazelbaker which had not been remedied at the time of Bickford's offer of reinstatement as the Union had sent no notice to Bickford or the Employer that did not object to his reinstatement. Accordingly, I find that at the time the Employer offered Bickford reinstatement that offer was tainted by the Union's unremedied unfair labor practices, and therefore Bickford's rejection of that offer did not terminate the Respondent's continuing backpay obligation to Bickford.[13]

[13] Respondent's reliance on *Krist Oil Co., Inc.,* 328 NLRB 825, 827 (1999), in its brief is unconvincing. In this regard, that case only involved unfair labor practice allegations against an employer in evaluating the employer's offers of reinstatement. It did not, unlike here, involve unremedied unfair labor practices against a union that precipitated the unlawful discharge. There, the Board stated, "an unlawfully discharged employee is privileged to reject an offer of reinstatement, and preserve his ongoing entitlement to reinstatement and backpay, where he has a reasonable fear of further discrimination against him. [FN7]" See at fn. 7, "*Domsey Trading Corp.*, 310 NLRB 777, 777-778 fn.3, 800 (1993), enfd. 16 F.3d 317 (2d Cir. 1994); see

The Union sent the Employer a letter dated August 6, stating it did not object to Bickford's reinstatement. The letter was sent to the address listed for the Employer on the amended charge filed by Bickford on June 30. The letter was copied to Region 7, but it was not sent directly to Bickford. The initial complaint issued on August 29, containing a different address for the Employer than the one listed on the amended charge. On September 17, the Union sent out a new letter to the Employer at the address listed on the complaint wherein it stated it did not object to Bickford's reinstatement. By its terms the letter was copied to the Region and to Bickford at the Michigan address listed in Bickford's employment application. First, it must be said that by the time the Local 38 had sent its August 6 letter Bickford had already rejected and waived future reinstatement from the Employer. On the other hand, the circumstances of Bickford's rejection of employment were fostered by the Union's uncured unfair labor practices the consequences of which should be borne by Local 38, not Bickford. The Union's August 6 letter was also defective per the Board's remedial requirements as it was sent to the wrong address for the Employer and it was not sent directly to Bickford. As to the address for the Employer, it was the Union's responsibility to ensure its letter was properly served. The Union was able to contact the Employer when it was in its interest to do so, as Hazelbaker testified he served the Employer with a copy of Local 38's referral list before the Employer began operations. Hazelbaker was also able to phone Conner shortly after Bickford began his employment resulting in Bickford's termination. Finally, it is elemental Board law in a backpay proceeding that any ambiguity is resolved against the wrongdoer not the wronged discriminatee. Thus, I have no problem finding the backpay period here, did not end at a minimum until the service of Local 38's September 17 letter, as contended by the General Counsel.[14]

Woodline Motor Freight, 278 NLRB 1141 (1986), enfd. in pertinent part 843 F.2d 285 (8th Cir. 1988)." Here, prior to executing the settlement agreement with the Employer, Bickford received an email from Conner stating that the employee who replaced Bickford would not be terminated in order to make room for Bickford, that Bickford who had been discharged from a position where he could reasonably expect at least 6 to 9 months employment which was significant in that industry, was also told by Conner that the job Conner could find for him may only be of short duration, that union members should be hired before Bickford, and that Conner, a Local 38 member did not want to work with him. Given the fact, that the Union did not meet its notification requirement at the time to the Employer and Bickford that it did not object to his reinstatement to his former position, I find that Bickford had a reasonable basis to reject the reinstatement offer as extended to him, and that his doing so did not terminate the Local 38's ongoing backpay liability to him.

[14] I do not find *Burnup & Sims, Inc.,* 256 NLRB 965 (1981), cited by the Respondent to be persuasive. There, the Board found a respondent employer's reinstatement offer letter was made in good faith as it was mailed to the only address the employee had ever provided to the employer. The address was contained on the employee's employment application, and other employment related documents the employee had filed with the employer. The address was printed on the employee's paycheck which the employee regularly received from the employer and used 2 months earlier for a registered letter that the employer had successfully sent to the employee. The Board specifically noted that there was no showing that the employer had alternative means for communicating with the employee as the employee listed on his employment application that he had no phone. Here, Local 38's August 6 letter was not sent directly to Bickford as the Union was required to do. Moreover, the copy sent to the Employer was sent to the wrong address although the Union had an ongoing relationship with that Employer, and the record reveals it had previously communicated with that Employer by phone and correspondence. I therefore find, as set forth above that the error in Local 38's initial mailing to the Employer should fall on Local 38, not on Bickford.

Bickford testified he looked for work after his discharge from Crown City. Bickford testified that, during the first 2 weeks after his discharge, he made calls to different industry contacts. Bickford testified he also checked for jobs on Craig's list to see if there was anything in Michigan. Bickford testified the contacts he checked with were different people who he has worked with over the years who he thought might have jobs coming up. Bickford testified that is typically how he finds work. Bickford testified that, following his termination, he stayed in Michigan until about the middle or end of July and then he drove back to Nevada. Bickford testified that between May and the third week in July he could not find any jobs in Michigan.

Bickford testified that following the initial 2 weeks after his termination from Crown City, he continued to seek work. He testified, "I was constantly calling people that I knew from LA and also back in Las Vegas to see whether there was any work available at the time." He testified he was not able to get any employment. Bickford named a gaffer in Los Angeles, who he contacted, as well as two people in Las Vegas seeking employment. Bickford testified he also contacted a named camera man-producer in Detroit. Bickford testified that in Las Vegas, Local 702 has a dispatch system for referring stage hands to convention centers. Bickford testified he placed his name back on Local 720's rotation list for referrals to work within the first two weeks of when he came back from vacation for Sage & Milo, which was May 9.[15] Bickford testified he did not go back to Las Vegas at that time but he called Local 720 to see if there was work and he put his name on the out of work list.

Bickford testified that he applied for work through Roger Haggart in Michigan, making multiple calls to him because he had productions in town. Bickford testified he looked on the Internet and made several phone calls to friends in Los Angeles working on movies to see whether he could get work. Bickford testified this was from the date he was fired from Sage & Milo until he went back to Las Vegas. He testified he was probably making 15 calls each month mostly to a friend in Los Angeles Mike Kelly. Bickford testified he did not look for any basic electrician jobs in Nevada or Michigan because he is not licensed to do basic electrician's work which is permanent in nature, whereas the production work he does is temporary. Bickford testified the only place he went on the internet looking for work was Craig's list after his discharge. Bickford testified that in the past that he had only received one job through Craig's list. He testified the reason he does not go after jobs on Craig's list is because they are low paying jobs, but after he was terminated from Sage and Milo, he was desperate for work, and would take anything he could get. Bickford testified that the Region did not tell him to keep track of the jobs he applied for, and Bickford did not keep a log of his job

[15] Bickford testified he did not put his name on Local 38's job list for being available for work because they would not let him work for the Sage & Milo, so he thought they would not dispatch him on any other jobs as an extra. I find that Bickford was justified in this position. I have concluded that Local 38 unlawfully caused Bickford's discharge from the Employer and Hazelbaker warned Conner the soonest Bickford would be able to be hired was when all locals had been employed. I have concluded this was a reference to Local 38 members as discussed above. As of July 8, Conner was still informing Bickford that he did not want to bring him back because there were two Local 38 members seeking employment and they should have preference over Bickford. Moreover, in its September 17 letter to Bickford, Local 38 although stating to the Employer that it did not object to his reinstatement, still refused to acknowledge that it had committed any unfair labor practices towards Bickford. I have concluded that given the circumstances here, Bickford reasonably concluded that since Local 38 had him terminated because of his traveler and non membership status pertaining to Local 38, that it would have been a futile act to seek further employment through Local 38.

search during the back pay period. He testified he did not go any place and put in an application. He testified he does not obtain work from applications so he did not send any out.

Bickford testified the first time he went to work after Sage & Milo was when he worked a half day at the Sands Convention Center during the second week of August 2014. Bickford testified that after the work at the Sands Convention Center he did not get any other calls through Local 720 until the end of September. He testified the Sands job came from Local 720. Bickford testified he was working at the time of his testimony. He testified he was doing freelance in that he is getting calls from Local 720. Bickford testified he started working freelance around the middle or end of September until he had to travel to Detroit for the trial.

The testimony revealed that work on Sage and Milo was sought after because it was a fairly lengthy assignment. The testimony revealed that in this industry that it was not uncommon for employees to have down time while they are seeking work. Moreover, Bickford received the job on Sage & Milo through his calls to contacts, which he credibly testified was the way he customarily conducted a job search for the industry in which he worked. He credibly testified that he engaged in such a search beginning shortly after his unlawful termination from Sage & Milo, as well as placed his name on Local 720's referral list. Seeking work in the fashion he customarily sought it was all he was required to do, and I have concluded that Respondent has failed to establish that Bickford did not make a reasonable job search during the backpay period. See, *Amshu Associates, Inc.*, 234 NLRB 791, 794 (1978); and *Tualatin Electric, Inc.*, 331 NLRB 36 (2000), enfd. 253 F.3d 714 (D.C. Cir. 2001). See also, *Black Magic Resources,* Inc., 317 NLRB 721, 722 (1995), where the Board reversed the judge and found in the circumstances there an employee's registering with the state unemployment for job referrals although he received no referrals, combined with his contacts with family members, friends and acquaintances, along with his seeking work at area farms was a sufficient job search to qualify for backpay although the employee never filled out a written application. I do not put much stock in Respondent's argument that Bickford's returning to Las Vegas should somehow disqualify him for backpay. There was no showing that the job market for someone with a work history and skills such as Bickford's was worse in Las Vegas than it was in Detroit. Moreover, Bickford was able to make use of Local 720's referral system in Las Vegas, something for which I have concluded he reasonably believed he was foreclosed from doing in Detroit due to Hazelbaker's unfair labor practices.

Conner credibly testified that Bickford's replacement shortly after his employment began worked 12 hours shifts, was paid for all holidays pursuant to the collective-bargaining agreement during the backpay period and left on his own volition at a time after the backpay period had ended.[16] Accordingly, since the parties are in agreement as to the pay rates, and benefit contributions required by the collective-bargaining agreement during the backpay period, as well as the starting date for the backpay period beginning May 12, and noting that no additional interim earnings than those accounted for have been demonstrated, I find that Bickford is entitled to the backpay amount set forth in the backpay specification, as amended,

[16] Conner testified the employees who continued to work for him in fixtures after Bickford was gone started at 10 hours a day and then in about 2 or 3 three weeks went to 12 hours a day. Conner testified that once they went to 12 hours they never went below that. However, Bickford testified that he worked 12 hours a day for the week he worked, and the settlement agreement signed by the Employer stated Bickford was compensated for 12 hours a day for the weeks covered by the settlement. Accordingly, I have concluded that the amended backpay specification correctly calls for compensation at the rate of 12 hours a day for the duration of the backpay period.

with the exception that backpay calculations shall begin on May 12, not May 6 as provided in GC Exh. 2, which otherwise contain the most current amendments to the specification.[17] In this regard, for the reasons set forth above, I have found, as argued by the General Counsel that Respondent's backpay liability ended on September 22, 5 days after Respondent sent is September 17 letter to Bickford and the Employer stating, as it was required to do, that Respondent had no objections to Bickford's reinstatement.

CONCLUSIONS OF LAW

1. Crown City Pictures, Inc., (Crown City) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 38, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada (IATSE), AFL-CIO (Local 38) is a labor organization within the meaning of Section 2(5) of the Act.

3. By causing Crown City to terminate Ralph Bickford on May 6, 2014, because he was not a member of Local 38, for reasons other than the lawful application of a contractual union security clause, Local 38 violated Section 8(b)(1)(A) and (2) of the Act.

4. The forgoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Local 38 has engaged in certain unfair labor practices, Local 38 must cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act. I have found that Local 38 caused Crown City to terminate Bickford on May 6, 2014, in violation of Section 8(b)(1)(A) and (2) of the Act. Therefore, Local 38 is required to make Bickford whole, plus interest for its unfair labor practices, with the backpay period running for Bickford running from May 12 to September 22, 2014. The unfair labor practice trial in this case was combined with a compliance proceeding pertaining to Bickford's backpay. Concerning the compliance aspect of the case, I have determined that Bickford is owed by Local 38 the amount of $34,460.16 in net backpay; and that Local 38 is obligated to pay $6110 in health and welfare contributions in Bickford's behalf; and $2960 in pension contributions in Bickford's behalf to the benefit funds specified by the collective-bargaining agreement in effect during the backpay period.[18] Local 38, its officers, agents, successors and assigns, shall pay Bickford the amounts specified, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State laws. Interest shall also be added to the monies owed to the funds using the same formula to

[17] GC Exh. 2 lists backpay of $1,269.24, and health care and pension contributions totaling $333 for the week ending May 10. It asserts a net backpay due to Bickford of $35,729.40 using May 6 as the starting date. However, since the parties agree that the starting date is May 12, I have revised the net backpay to equal $34,460.16. Similarly, I have reduced the claimed health and welfare contribution amounts by 4 days at $74 a day, $296, thereby reducing $6406 total list to $6110. Finally, I am reducing the requested pension contribution by 4 days at $37 a day or $148, or $3108 minus $148 equals $2960.

[18] There was a pre-hearing settlement between Bickford and Crown City for which Bickford received a certain amount of backpay from the Employer and for which the Employer also made certain fund contributions in Bickford's behalf. The sums paid by the Employer were deducted from the total amounts calculated to be owed by Local 38 to Bickford in deriving the net backpay and fund contributions currently owed by Local 38 as set forth above.

calculate interest, but no withholdings are to be deducted. I shall also order that Local 38 cease and desist in any like or related manner from interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

A. Local 38, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada (IATSE), AFL-CIO (Local 38) its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Causing or attempting to cause employers including Crown City Pictures, Inc., (Crown City) to discriminate against employees in violation of Section 8(a)(1) and (3) of the Act.

(b) In any like or related manner restraining or coercing the employees of Crown City in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the Act:

(a) Make Ralph Bickford whole for any loss of earnings or other benefits, plus interest, suffered as a result of Bickford's May 6, 2014, termination of employment from Crown City.

(b) Post at its offices, hiring halls, and at any Crown City location where Local 38 is permitted to post notices copies of the attached notice. Copies of said notice, on forms provided by the Regional Director for Region 7, shall be posted by Local 38 after being signed by Local 38's authorized representative immediately upon receipt thereof. The notices shall be maintained by Local 38 for 60 consecutive days after posting in conspicuous places where notices to the above-described members and employees are customarily posted. Reasonable steps shall be taken by Local 38 to insure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by e-mail, posting on an intranet and/or other electronic means, if the Local 38 customarily communicates with its members and/or employees of Crown City by such means. Finally, because there is testimony that the production was winding down, Local 38 shall, at its expense, be required to mail a signed copy of the Notice to Bickford, as well as to all Local 38 members who worked on the Sage & Milo production on or after May 6, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Local 38 has taken to comply.

Dated, Washington, D.C. March 18, 2015.

Eric M. Fine
Administrative Law Judge

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

APPENDIX
NOTICE TO MEMBERS AND EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT cause or attempt to cause Crown City Pictures, Inc., or any other employer, to discriminate against employees because they are not members of Local 38, or because they are members of other IATSE locals, in the absence of our lawful enforcement of a valid union security clause.

WE WILL NOT in any like or related manner restrain or coerce the employees of Crown City Pictures, Inc., or any other employer, in the exercise of their rights protected by Section 7 of the Act.

WE WILL make Ralph Bickford whole for any loss of earnings or other benefits, plus interest, suffered as a result of Bickford's May 6, 2014, termination of employment from Crown City Pictures, Inc..

WE WILL notify Crown City Pictures, Inc., and Ralph Bickford in writing that Local 38 has no objection to Crown City Pictures, Inc., awarding Bickford his former position, or if that is not available, a substantially equivalent position, displacing any employee, if necessary, occupying that position.

LOCAL 38, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES,ITS TERRITORIES AND CANADA (IATSE), AFL-CIO

(Union)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300
Detroit, MI 48226-2569
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07–CB–128512 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3244.